Appellant's Printed Matter

Read.

SUPREME COURT OF THE UNITED STATES.

No. ~~275.~~ 449.78.

THE UNITED STATES, APPELLANTS,

vs.

THE STEAMBOAT MOHAWK, HER ENGINE, &c., MATTHIAS TEETZEL AND AL., CLAIMANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MICHIGAN.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 275.

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vs.

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1 Circuit court of the United States for the seventh circuit and eastern district of Michigan.

Pleas at the city of Detroit, in the eastern district of Michigan, before the judges of the circuit court of the United States for the seventh circuit and eastern district of Michigan, of the term of November, in the year of our Lord, one thousand eight hundred and sixty-three.

In the case of—

THE UNITED STATES OF AMERICA, appellant,
vs.
THE STEAMBOAT MOHAWK and her engine, boats, apparel, tackle, and furniture, appellee.
} On appeal.

Be it remembered, that on the twenty-fourth day of April, in the year of our Lord, one thousand eight hundred and sixty-three, Alfred Russell, esquire, the United States district attorney for the eastern district of Michigan, on behalf of the United States of America, brought into and filed in said circuit court of the United States for the seventh circuit and eastern district of Michigan, before the judges thereof, the transcript of the decree, judgment, and proceedings of the district court of the United States for the eastern district of Michigan in the above-entitled cause, which said transcript is in the words and figures following, that is to say:

2 UNITED STATES OF AMERICA:

District court of the United States for the eastern district of Michigan.

In the matter of the libel and claim of—

THE UNITED STATES OF AMERICA
vs.
THE STEAMBOAT MOHAWK.
} In admiralty.

Before the judge of the court aforesaid at Detroit, in said district, of the term of March, A. D. 1863.

A. RUSSELL,
U. S. Attorney.
MOORE & GRIFFIN,
Claimant's Proctors.

Attachment.

DISTRICT COURT OF THE UNITED STATES,
For the eastern district of Michigan, ss:

[L. S.] The President of the United States of America, to the marshal of the district of Michigan, greeting:

Whereas a libel hath been filed in the said district court of the United States for the said eastern district of Michigan, on the

eleventh day of July, in the year of our Lord one thousand eight hundred and sixty-two, by the United States of America against the steamboat Mohawk, the said vessel having been seized by the collector of the port of Detroit for an alleged violation of the revenue laws of the United States, claiming that the said vessel is forfeited to the said United States for the reason and causes in the said libel alleged and mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamboat or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and that all proceedings being had, that the said steamboat or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are, therefore, hereby commanded to attach the said steamboat Mohawk or vessel, her tackle, &c., and to detain the same in your custody until the further order of the said court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the said eastern district of Michigan, on the first Monday of August next, at ten o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction
3 thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises then and there make the return thereof, together with this writ.

Witness the honorable Ross Wilkins, judge of the district court of the United States for the eastern district of Michigan, at the district court-room, in the city of Detroit, in the said district, this eleventh day of July, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States of America the eighty-seventh.

(Signed) JNO. WINDER, *Clerk.*

Return of service of attachment.

EASTERN DISTRICT OF MICHIGAN, *ss:*

By virtue of the within writ, on the fourteenth (14) day of July, A. D. 1862, I seized the within-named steamboat Mohawk, her engine, machinery, boats, tackle, apparel, and furniture, and now have the same in my custody, to await further order of the court in the premises.

(Signed) CHARLES DICKEY, *U. S. M.*
By G. L. BRISTOL, *Deputy.*

Libel.

District court of the United States for the eastern district of Michigan.

To the honorable Ross Wilkins, judge of said court:

Alfred Russell, attorney of the United States for the said district, who prosecutes for the said United States, exhibits this his libel of information against the steamboat Mohawk, her engine, boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interests therein.

And thereupon the said district attorney doth articulately propound, and give the said judge to understand and be informed as follows, to wit: that on the tenth day of July, A. D. 1862, at the port of Saint Joseph's, in the eastern district aforesaid, on waters navigable from the sea by vessels of ten or more tons burthen, and within the admiralty and maritime jurisdiction of the United States, Nelson G. Isbell, esquire, collector of customs for the collection district of Detroit, did seize the aforesaid steamboat Mohawk,
4 her engine, boats, tackle, apparel, and furniture, and now holds the same in his custody, within the eastern district of Michigan aforesaid, as forfeited to the said United States, for the reasons hereinafter stated, to wit:

First. That from the eighteenth day of June up to the time of said seizure, a certificate of registry or record, to wit, an enrolment and a license for the coasting trade, was fraudulently and knowingly used for said steamboat Mohawk, which said vessel was not, during said time, actually entitled to the benefit thereof, according to the true intent of the act of December the thirty-first, A. D. 1792, concerning the registry of vessels, or of the act of February the eighteenth, A. D. 1793, concerning the enrolment and licensing of vessels, or of the act of December the twenty-third, A. D. 1852, concerning the enrolment of foreign vessels wrecked in the United States, and in violation of the provisions of section 27 of said first-named act.

Second. That on the tenth day of June, A. D. 1862, George J. Fellers, of Detroit, in said eastern district, took and subscribed an oath at the custom-house in said Detroit, before D. V. Bell, jr., inspector of customs and deputy collector, declaring that he, said Fellers, was the true and only owner of said steamboat, which said matter of fact, in said oath alleged, was within the knowledge of said party, and was not true, because certain other persons, to wit, George Paronsalee, Matthias Teetzel, Warren Chapman, John Martin, and L. Hickey were then in reality either part or sole owners of said vessel, in violation of section 4 of the aforesaid act of 1792, and section 2 of said act of 1793.

Third. That the said George J. Fellers, on or about the thirty-first day of May, A. D. 1862, caused to be filed with the collector of said Detroit, certain affidavits, to wit: affidavits sworn and subscribed before Levi T. Griffin, a notary public for Wayne county, in said

district, by George J. Fellers, John A. Sloan, and Stewart McDonald, for the purpose of procuring the said steamboat to be enrolled under the aforesaid act of 1852, and that the statements of fact in each and all of said affidavits, touching the wreck of said vessel within the United States, the title of said Fellers thereto by
5 purchase, the amount of purchase-money paid therefor, and the repairs thereupon, being equal to three-fourths of the cost thereof when repaired, were within the knowledge of the parties so making said affidavits, and were not true, because said vessel, in truth and in fact, was never wrecked in the United States, within the meaning of said act of 1852, as stated in said affidavits, and because said Fellers had not in reality purchased and repaired said vessel, within the meaning of the said act, as stated in said affidavits, and because the amount of purchase-money and the value of said vessel was in reality six thousand dollars, instead of twelve hundred dollars, as stated in said affidavit, and because the amount of repairs of said vessel was not in fact equal to three-fourths of her cost, as stated in said affidavits, in violation of the last aforesaid sections of the last aforesaid acts.

Fourth. That said steamboat, between the said eighteenth day of June and the date of said seizure, was over twenty tons burthen, and was a foreign vessel, built in Canada, and was found trading during said time between Chicago, in the district of Illinois, and Saint Joseph's, in the district of Michigan, without being enrolled and licensed, and did arrive at said ports at divers times during said time without paying the fees and tonnage dues required by law, in violation of section six of the aforesaid act of 1793.

Fifth. That the owners and masters of said steamboat did transport therein, on ten different occasions, during the time last aforesaid, goods, wares, merchandise, and passengers, in and upon lake Michigan, navigable waters of the United States, and between said last mentioned ports, without having first obtained from the proper officer a license, under existing laws, in violation, upon each of said occasions, of section two of the act of July (7th, A. D. 1838,) seventh, A. D. one thousand eight hundred and thirty-eight, concerning steamboats, and for each of said violations the owner aforesaid did forfeit the sum of five hundred dollars, for which sum the said steamboat is liable to the said United States.

Sixth. That the owners and masters of said steamboat did transport therein, on ten different occasions, during the time last aforesaid, goods, wares, merchandise, and passengers in and upon lake Michigan, navigable waters of the United States, and between said last mentioned ports, without having complied with the conditions of the
6 act last aforesaid, and those of the act of August the thirtieth, A. D. 1852, upon the same subject, touching the construction, equipment, and inspection of the hull and boilers of said steamboat, and for each of said violations the owners aforesaid did forfeit the sum of five hundred dollars, to wit, in all, five thousand dollars, for which sum the said steamboat is liable to the said United States.

Seventh. That the facts and circumstances under which said several

forfeitures accrued, are as follows: that certain parties in Saint Joseph aforesaid, and hereinafter named, were looking for a vessel to run between that place and Chicago, and ascertained that one Sloan, of Malden, Canada, had a vessel to sell; that said Sloan wrote to said parties that he would sell said vessel for six thousand dollars, part cash. That the vessel spoken of was the Mohawk; that the said steamboat Mohawk was built in a foreign country, and not in the United States, and was a British bottom, and was owned by a foreigner and a non-resident of the United States up to about the twenty-eighth day of March, A. D. 1862; and that on or about said day the said Chapman, Hickey, Martin, and Parmalee, and one Nathaniel Robins, whose interest was afterwards assumed by said Mathias Teetzel, made a contract with said John A. Sloan, a resident of Canada, and a British subject, who claimed to own said steamboat, for the purchase of said steamboat for the sum of six thousand dollars; that by the terms of the contract said Sloan was to procure said vessel to be metamorphosed into an American bottom, and procure for her an enrolment and license as an American vessel, to engage in the coasting trade; and that said vessel was then immediately taken possession of by said Hickey, under said contract. for himself and other purchasers. That accordingly said Sloan caused said vessel to be sunk by artificial means during fair weather in shallow water, and while moored to the American shore of the Detroit river, near the city of Detroit, after the purchase aforesaid, and on or about the eleventh day of April, A. D. 1862.

That on the twelfth day of said April, said Sloan made a pretended bill of sale, for a pretended sum of twelve hundred dollars, to one George J. Fellers, of Detroit; that said Fellers was a friend of
7 said Sloan and connected with him in sundry ways, and had actually no interest in said purchase, and merely took the title for the benefit of the parties last hereinbefore named, and that the sum of twelve hundred dollars was named in said bill of sale, in order to enable the reckoning of the contemplated subsequent repairs at three-fourths of the vessel's cost, with intent to make a false and simulated case under the said act of 1852.

That immediately after the making of said pretended bill of sale, repairs to a small amount, and additions to a large amount, to fit her for the Saint Joseph and Chicago trade, for which she had been as aforesaid bought, were made to said vessel at Detroit under the direction of said Hickey, who had previously taken possession as aforesaid. That said Hickey and the other owners aforementioned paid, or secured to be paid, the amount of the repairs and additions aforesaid, and that said Fellers either made no payments at all for such repairs and additions, or if he did, made them as advanced in behalf of said parties. That five hundred dollars would cover the actual repairs made to said vessel within the meaning of said act of 1852, exclusive of additions and furniture made to fit her for the passenger trade, on said route, and other furniture which had been taken off her in Canada before she was sunk, and subsequently imported and placed on board her in accordance with the contract of sale made

by said Sloan as aforesaid. That in pursuance of said contract of sale, said Sloan caused said Fellers to file with said collector as aforesaid, about the thirty-first day of May, A. D. 1862, the affidavits aforesaid, making a pretended case within the law of 1852 aforesaid, and thereby an order from the Secretary of the Treasury was fraudulently procured, on or about the fifth day of June, A. D. 1862, authorizing the enrolment of said vessel, and that said Fellers, on the tenth day of June, took and subscribed the oath and made the bond required by the aforesaid laws, and on the eighteenth day of said June received from said collector an enrolment and license for said steamboat, and on that very day executed four bills of sale of said vessel, as follows: one to said Teetzel of a one-fifth part, for an alleged consideration of eleven hundred dollars; one of a like part for a like alleged consideration to said Chapman, the same to said Martin, and a bill of sale to said Parmalee of two-fifths, for two thousand two hundred dol-
8 lars consideration; one of said fifths being for the benefit of said Hickey. That the said five parties raised five hundred dollars in cash to pay said Sloan upon said purchase-price of six thousand dollars, and paid it either to said Sloan or to said Fellers, for the benefit of said Sloan. That the balance of said purchase-price was the amount of the consideration of said four bills of sale, to wit, five thousand five hundred dollars in promissory notes, of amounts corresponding to said bills of sale, executed by the venders named therein, and that said notes were given for said Sloan's benefit, and really upon said original purchase from him. That said purchasers were apprehensive that trouble might arise out of the illegal and fraudulent character of the aforesaid transaction, which was well known to all parties concerned as aforesaid, and required and received from said Fellers a bond, conditioned to indemnify them against loss. That between the twenty-eighth day of March, aforesaid, and said eighteenth day of June, said Saint Joseph parties paid one thousand nine hundred dollars in cash upon the repairs and additions to said vessel, and became obligated for about two thousand dollars more on account of said additions, which amounts fully cover all the repairs and additions made to said vessel. That said vessel was procured to be enrolled and licensed on the nineteenth day of June, at Detroit, by said St. Joseph owners in their names, and was navigated immediately to Saint Joseph's, and put on the route from thence to Chicago, and so ran until said seizure.

Whereby, and by force of the statutes in such case made and provided, the said steamboat became, and is, forfeited to the uses in the said statutes specified.

And the said attorney, on behalf of the United States, saith that all and singular the premises are true.

Wherefore, he prays that process, in due form of law, may issue against said steamboat to enforce the forfeiture thereof, and requiring notice to be given to all persons concerned in interest to appear and show cause on the return day of said process why such forfeiture should not be decreed.

(Signed) ALFRED RUSSELL,
U. S. Dis't. Att'y, Michigan.

Proof of publication and posting of notice.

District court of the United States for the district of Michigan.

9 Jacob Barnes, one of the publishers of the Detroit Daily Free Press, a newspaper published in the city of Detroit, in said district, being duly sworn, doth depose and say: That the notice, a printed copy of which is hereunto appended, has been published twice a week for two weeks successively in the newspaper aforesaid, the first insertion of said notice being on the eighteenth day of July, and the last insertion on the first day of August, A. D. 1862.

(Signed) JACOB BARNS.

Sworn and subscribed before me this fourth day of August, A. D. 1862.

J. ELISHA WINDER,
Notary Public, Wayne Co., Michigan.

District court of the United States for the eastern district of Michigan.

J. Elisha Winder, deputy clerk of the district court of the United States for said district, being duly sworn, doth depose and say: That he posted a printed copy of the original notice in the above case (a printed copy which is prefixed above) on the outer door of the United States district court room, in the city of Detroit, in said district, on the eighteenth day of July, where it remained posted until the fourth day of August, A. D. 1862.

J. ELISHA WINDER.

Sworn and subscribed before me this fourth day of August, A. D. 1862.

(Signed) JNO. WINDER,
U. S. Commissioner Circuit Court U. S.,
7th Circuit Court and Eastern Dis't of Michigan.

District court of the United States for the district of Michigan.

THE UNITED STATES OF AMERICA
vs.
THE STEAMBOAT MOHAWK, her boats, engine, tackle, apparel, and furniture. } In equity.

Whereas said vessel hath lately been seized by the collector of Detroit, and thereupon a libel of information hath been filed against the same in the said court, and whereas I have arrested and hold the same by warrant under said libel, in pursuance of an order of the said court in the premises, made on the sixteenth day of July, A. D. 1862, and of the statute in such case made, notice is hereby given of such seizure and libel, and that said libel prays in substance a forfeiture of said vessel to the United States for a violation of certain acts of Congress, to wit: Section 27 of the act of December, 31, A. D. 1792; section 4 of said act; section 2, act of February 18, A. D. 1793; section 6 of

said last named act; and the act of December, 23, A. D. 1852; and that Matthias Teitzel, Warren Chapman, George Parmalee, John Martin, and L. Hickey, of St. Joseph's, Michigan, were her owners at the time of said seizure. And all persons claiming any interest in said vessel are hereby cited to appear at the U. S. court-room, in the city of Detroit, on Monday, the third day of August, A. D. 1862, at ten of the clock in the forenoon, at the time and place appointed for trial, to show cause why said vessel should not be forfeited and sold.

(Signed) CHARLES DICKEY,
U. S. Marshal.
ALFRED RUSSEL,
U. S. District Attorney.

10 *Answer.*

In the district court of the United States for the eastern district of Michigan.

The STEAMBOAT MOHAWK, her engine, &c., *ads.* The UNITED STATES OF AMERICA. } In admiralty.

The claim, answer, and exceptions of Matthias Teetzel, George Parmela, Warren Chapman, and John Martin, of the village of St. Joseph, county of Berrien and State of Michigan, alleges as follows, to wit :

First. That these respondents are the owners of said steamboat "Mohawk," her engine, &c., and that no one else is the owner thereof, and that they have caused a claim to be put in therefor; that these respondents admit that, on the tenth day of July, A. D. 1862, at the port of St. Joseph, in the eastern district of Michigan, on waters navigable from the sea by vessels of ten or more tons burthen, the said steamboat was seized by Nelson G. Isbell, esq'r, collector of customs for the collection district of Detroit ; but these respondents deny that, from the eighteenth day of June up to the time of said seizure, a certificate of registry, or an enrolment and license for the coasting trade, was fraudulently and knowingly used for said steamboat, contrary to the said several acts of Congress, as alleged and set forth in the first article of said libel.

Second. That these respondents admit that they are informed and believe, that, on the tenth day of June, A. D. 1862, George O. Fellers, of the said city of Detroit, took and subscribed an oath, at the custom-house, in said district, declaring that he was the sole and only owner of said steamboat Mohawk; which fact these respondents are informed and believe to be true, and these respondents deny, upon their own knowledge, so far as they and each of them are concerned, and deny, upon information and belief, as to the said Hickey, that they, or either of them, or the said Hickey, was part or sole owner of the said steamer "Mohawk," in violation of the acts cited in the second article of said libel.

Third. That these respondents are ignorant, except as they are informed by the said libel, of the contents of the affidavits of George I. Fellers, John A. Sloan, and Stewart McDonald, alleged to have been filed for the purpose of procuring the said steamboat to be enrolled, as alleged in the third article of said libel.

That these respondents say they are advised that of the
11 allegations of the filing of the said affidavits, of the contents of the same, and the facts therein referred to, as set forth in said third article be true, then these respondents are in no manner in fault, or liable by reason thereof; that these respondents acquired said steamboat subsequent thereto, in good faith, for a good and valuable consideration, and without notice of any fraud connected therewith, if any there be, and that these respondents' right to said steamboat are not affected thereby; but these respondents deny, upon information and belief, that there is any fraud or violation of law in the enrolment and license, or in the proceedings to procure the same, of the said steamboat Mohawk, under the said act of Congress cited.

Fourth. That these respondents admit that, between the said eighteenth day of June, A. D. 1862, and the time of said seizure by the collector, as aforesaid, the said steamboat Mohawk was of twenty tons burthen, and trading between Chicago, in the district of Illinois, and St. Joseph's, in the eastern district of Michigan, and while so trading did transport, upon the waters of Lake Michigan, waters navigable of the United States, passengers, goods, wares, and merchandise to and from and between the ports and places before named; but these respondents deny that the said steamboat did so transport passengers, goods, wares, and merchandise to and from and between the ports and places aforesaid, without enrolment and license; deny that said steamboat was a foreign vessel; deny that they have, or that the said steamboat has, been guilty of any violations of the said several acts, or of any of them, whereby the said steamboat has become liable to a fine or forfeiture to the United States, as alleged in the fourth, fifth, and sixth articles of said libel.

Fifth. That as to the allegations in the seventh article of said libel contained, they are in almost every respect untruly and falsely alleged and pleaded, but they admit that they are informed and believe that the said John A. Sloan is a resident of Canada, and a British subject; and that the said steamboat Mohawk was a foreign built vessel; that the said Sloan sold said steamboat Mohawk to
the said George I. Fellers, who procured an order from
12 the Secretary of the Treasury, for the enrolment of the said steamboat, that on the tenth day of June, A. D. 1862, he took the oath and filed the bond as required by law, and on the eighteenth day of June aforesaid, received from the collector of the port of Detroit an enrolment and license for said steamboat, and on the same and following day conveyed to these respondents the said steamboat, as alleged in said libel; that a portion of the purchase-price was paid to the said Fellers in cash, and notes of the several respondents were given for the balance; but these respondents deny that they or either of them, or any one in their behalf, on or about the twenty-eighth

day of March, A. D. 1862, or at any other time, purchased the said steamboat Mohawk, or made any contract of purchase of said steamboat of the said John A. Sloan, agreeing to pay therefor the sum of six thousand dollars; deny that the said Hickey went into possession thereof for them or on their behalf, by virtue of a purchase from said Sloan; deny that they were to pay the said Sloan or any other person the sum of six thousand dollars for said steamboat, and make their own repairs thereon; deny that the said Hickey is owner of one-fifth part of said steamboat, or of any part. They admit that the said Hickey is to have a one-fifth interest whenever he shall pay or secure the pay therefor. They deny that they ever purchased the said steamboat of the said Sloan; deny that they ever paid or ever agreed to pay the said Sloan anything for the said steamboat. They deny, upon their information and belief, that said money was paid or notes given for the benefit of the said Sloan: that these respondents deny any fraud or intent to defraud the United States or any one else; deny that they had any knowledge or suspicion that there was any fraudulent act or intent on the part of the said Fellers, or any one, in procuring the enrolment of said steamboat, if there was any such act or intent. They expressly deny that they had any apprehension or fear that trouble might arise out of their purchasing of said steamboat, on account of any fraud of the said Fellers, or any one else in procuring the enrolment and license of the said steamboat, and deny that they or either of them prior to the seizure of the said steamboat, by the collector as aforesaid, ever received or demanded any bond from the said Fellers, or any one else, conditioned to indemnify them against loss arising out of said pretended fraud. They admit
13 that a bond of indemnity was spoken of by these respondents at or about the time of the purchase of the said steamboat, but such indemnity referred only to the debts which might be outstanding and valid liens upon and against the said steamboat; but these respondents deny that any such bond, or any bond whatever, was then received or has since been received of the said Fellers, or any one else indemnifying these respondents against the debts of said steamboat, or against loss of any kind upon the said steamboat. That these respondents admit that on the nineteenth day of June these respondents paid to the said Fellers about the sum of fourteen (14) hundred dollars, to apply on the purchase-price for repairs and supplies for the said steamboat; but these respondents deny that they had paid or caused to be paid anything on the purchase-price of said steamboat, or for her repairs, prior to the said eighteenth day of June, 1862.

Sixth. That these respondents are residents of the village of Saint Joseph, and county of Berrien aforesaid, and purchased said steamboat in good faith, and without any intent to defraud or injure the United States or any one else; that they purchased said steamboat for and as alleged in said libel, immediately put her on the route from the said port and village of St. Joseph to the port of Chicago, in the State of Illinois; that at that time there was another steamboat on said route, owned by a person or persons in the city of Chicago, at whose instance and upon whose complaint, as these respondents are

advised and believe, the said steamboat Mohawk has been seized by the collector as aforesaid.

Seventh. That these respondents say that they are advised and believe that the said steamboat Mohawk, her engine &c., is not liable to forfeiture under the provisions of section 27 of the act of December 31, 1792, or of any of the act cited by said libellant.

Eighth. These respondents, therefore, except to the allegations in said libel contained, and allege that the said libel is insufficient, in that libellants do not make such a case by the said libel as would render said steamboat liable to forfeiture.

Wherefore, these respondents pray that said libel may be dismissed with costs and such further order as justice may require.

(Signed) M. TEETZEL.
14 (Signed) GEORGE PARMELA.
(Signed) WARREN CHAPMAN.

STATE OF MICHIGAN,
County of Berrien, ss :

On the 25th day of August, A. D. 1862, personally came before me, Matthias Teetzel and George Parmalee, of said county and State, and being by me severally sworn, depose and say, that they, and each of them, have read the foregoing answer by them subscribed, and know the contents thereof ; and that the same is true of their own knowledge, except as to the matter therein contained and alleged upon their information and belief, and as to those matters, they believe it to be true.

(Signed) DAMON A. WINSLOW,
Notary Public, Berrien County.

STATE OF MICHIGAN,
County of Cass, ss :

On the 30th day of August, 1862, personally came before me, Warren Chapman, one of the respondents above named, and being by me sworn, says, that he has read the foregoing answer, and knows the contents thereof, and that the same is in all respects true, as he verily believes.

(Signed) JAMES M. SPENCER.
Notary Public, Cass County, Michigan.

Exceptions to joint claim and answer.

District court U. States, Michigan.

THE UNITED STATES
vs.
THE STEAMBOAT MOHAWK, TETZEL, *et al.*, claim'ts. } In admiralty.

And now comes Alfred Russell, attorney of the United States for said eastern district, and excepts to the claim and answer of said claimants :

First. Because said claim does not state that said claimants are the

true and bona fide owners of said vessel, and that no other person is owner thereof.

Second. Libellant excepts to the sufficiency, fullness, distinctness, and relevancy of said answer, especially because said answer is not explicit to each separate article and each separate allegation in the libel, in the same order as numbered in the libel.

Third. Because said answer is not explicit to the allegation that said vessel was not actually entitled to the benefit of the enrolment she used, from the 18th of June, 1862, to the time of seizure, according to the intent of the acts set forth in article 1 of the libel.

Fourth. Because said answer neither admits nor denies the matter of the second article of said libel in this : that it does not admit nor deny that said Fellers took the oath alleged, nor that the matter of fact in said oath alleged was within the knowledge of said Fellers, nor that the same was not true.

Fifth. Because said answer neither admits nor denies, nor confesses, and avoids, nor in any way meets, article third of said libel, or any one of the separate allegations therein contained, and is not only not explicit and distinct to said article, and its separate allegations, but does not even mention them at all.

Sixth. Because the allegations in the third article of said answer, setting forth, apparently by way of plea, that the said claimants are bona fide purchasers, without notice of any causes of forfeiture, is irrelevant, and the libellant excepts thereto by way of demurrer.

Seventh. Because said answer is not sufficient, or explicit, or distinct to the matter of the seventh article of the libel, and does not admit or deny that parties, to wit, claimants in St. Joseph, were looking for a vessel to put on the Chicago route from St. Joseph, or that they ascertained that said Sloan had a vessel to sell, or that said Sloan wrote to them that he would sell said vessel, to wit, the Mohawk for $6,000, part cash, or that said vessel was owned by a foreigner and non-resident of the United States up to March the 28th, A. D. 1862, or that said claimants, with one Hickey and one Nathaniel Robbins, made a contract with John A. Sloan, whereby said Sloan was to procure said Mohawk to be metamorphosed into an American bottom, and procure for her an enrolment, and license to engage in the coasting trade, as an American vessel, or that said Hickey took possession of said vessel for himself and said claimants, under such contract, or that said Sloan caused said vessel to be sunk by artificial means during fair weather in shallow water, and while moored to the American shore of the Detroit river near Detroit, on or about April 11th, 1862, or that on the 12th day of April aforesaid, said Sloan made a pretended bill of sale, for a pretended sum of $1,200 to said Fellers, or that said Fellers was a friend of Sloan's, and variously connected with him, and actually had no interest in said purchase, and merely took the title for the benefit of the claimants and others, and that the sum of $1,200 was named in said bill of sale in order to evade the reckoning of contemplated subsequent repairs at $\frac{3}{4}$ of the vessel's cost, and with intent to make a false and simulated case under the act of 1852, or that immediately after the making

of said pretended bill of sale, repairs to a small amount, and additions to a large amount, to fit her for the Chicago and St. Joseph trade, for which she had been as aforesaid bought, were made to said vessel at Detroit under the directions of said Hickey, who had previously taken possession as aforesaid, or that said Hickey and the other owners aforementioned paid, or secured to be paid, the amount of the repairs and additions aforesaid, and that said Fellers either made no payments at all for such repairs and additions, or if he did, made them as advances in behalf of said parties, or that five hundred dollars would cover the actual repairs made to said vessel, within the meaning of said act of 1852, exclusive of additions and furniture made to fit her for the passenger trade on said route, and other furniture, which had been taken off her in Canada before she was sunk, and subsequently imported and placed on board her, in accordance with the contract of sale made by said Sloan, as aforesaid, or that, in pursuance of said contract of sale, said Sloan caused said Fellers to file, with said collector as aforesaid, about the thirty-first day of May, A. D. 1862, the affidavits aforesaid, making a pretended case within the law of 1852 aforesaid, and thereby an order from the Secretary of the Treasury was fraudulently procured, on or about the fifth day of June, A. D. 1862, authorizing the enrolment of said vessel, or that said claimants and one Hickey gave their promissory notes for
17 $5,500, and $500 in cash to said Sloan or to said Fellers really for the benefit of said Sloan, and upon a purchase from said Sloan of $6,000, but ostensibly on a purchase from said Fellers, or that $1,200 in cash had been paid by said claimants on the additions to said vessel, by June 18th, 1862, or that at that time they had become obligated for $2,000 more for the same, or that said two amounts cover all the repairs and additions to said vessel, or that said claimants caused said vessel to be enrolled and licensed, at Detroit, on the 19th June, A. D. 1862.

That the said answer does not mention or refer to any of these several matters.

Eighth. Because said answer is upon the oath or solemn affirmation of three only of said claimants, and not of all said claimants.

And said attorney prays that the matter of said exceptions may be adjudged good and valid, and that a new claim and answer may be compelled to be filed, or that the matter of these exceptions may be taken pro confesso against the defendants to the full purport and effect of the articles of said libel, especially the third and seventh articles.

(Signed) ALFRED RUSSELL,
U. S. District Attorney.

Depositions on behalf of Libellants.

Luke Hickey, being duly sworn, deposes and says: My name is Luke Hickey. I reside at St. Joseph's, Berrien county, Michigan. My age is about thirty-nine years. I am a sailor. I am acquainted with the steamboat Mohawk, which has been libelled in this cause; I first

saw her as much as twenty years ago. I saw her last spring, about the fifth of April; she was at the dry dock of Clark & Co., about two miles below the city of Detroit, Michigan; she was tied up on the other side of the slip; there is an elbow between the dry dock and the river; she laid on the side next the city of Detroit; she was not in the dock, she was on the other side of the pier; where she lay the depth of water was about four feet forward, and about eight feet aft, where she was sunk, at that place, when I saw her. I judge of the depth of the water from the appearance of the steamboat. I did notice the marks forward, but I did not notice them aft.

18 Question, sol'r for libellant. From whom, if from any one, did you learn how long she had been lying where you first saw her in April last?

(Objected to by D. A. Winslow, on part of claimants and respondents. 1st. Because it involves two questions, and 2nd, because it is hearsay.)

Answer. I heard John A. Sloan, captain of the steamer Pearl, say that he towed her there the fall before, just before the close of navigation.

Question by sol'r for libellant. Who owned her when you first saw her in April last?

(Question objected to by D. A. Winslow, on part of respondents and claimants, for the reason that the papers showing the title would be the best evidence.)

Answer. Captain John A. Sloan was, as I understood from himself and several others, the owner. I examined her at that time; George Parmalee, of St. Joseph, Michigan, was with me when I examined her; we made a pretty thorough examination of her all over; we looked to see whether there was any water in the vessel; we did not find any when we looked; we did not look aft for the reason we could not get in; we did not find any place to get under the floor; she was afloat; I presume there was water aft, but I did not see it, for I could not get there; I do not suppose there was much water in her. I scraped the iron on the inside of the vessel to see the condition of it. We found a scale of rust, probably one-eighth of an inch in thickness, pretty much all over, so far as we searched. It appeared to be sound when we examined her, with the exception of some dinges where she had run against something. Those dinges did not do her any very material damage, so far a I know, but they may have started some of the rivets.

Question by sol'r for libellant. State whether the hull appeared to be seaworthy or not, in your judgment.

(Question objected to by D. A. Winslow, on part of the respondents and claimants, for the reason that it does not appear that the witness is an expert in that business.)

Answer. It appeared to be, so far as I could see. I could not see the whole hull, as a portion of it was under water; we went there as delegates for the purchase of the boat, if we deemed it expe-

19 dient. We went as delegates for George Parmalee, Henry C. Morton, Charles Hull, John Martin, Nathaniel Robbins, and

Luke Hickey, myself. She was to be purchased if we deemed it expedient to run between St. Joseph's, Michigan, and Chicago, Illinois. It was about the 3d or 4th of April, 1862, that the design was formed to purchase the boat; I had not previously learnt that the boat was for sale.

Question by sol'r for libellant. State, if you know, whether there had been any previous correspondence with Captain Sloan in regard to the purchase of the vessel.

(Objected to by D. A. Winslow, on part of respondents and claimants, for the reason that it can only be hearsay, and is irrelevant.)

Answer. I understood from Captain Robbins that there had, but I do not remember whether I read one of the letters. I did not take any of the letters with me when I went to Detroit to examine the vessel; it was the intention that I should take them, but Captain Robbins neglected to give them to me. Captain John A. Sloan lived in Amherstburg, Canada West; we met him in Detroit; this was by appointment, the object of our calling on him in Detroit was, that he claimed to be the owner of the boat, and we wished to confer with him all about it, as to her qualities; he got his price and terms for the vessel.

Question by sol'r for libellant. State what was his price and terms for the vessel.

(Question objected to by D. A. Winslow, on part of the respondents and claimants, for the reason that the witness said he did not negotiate with Captain Sloan for the boat, and the question is therefore irrelevant.)

Answer. I think his price was six thousand dollars—three thousand down, and the balance in one and two years. I did not examine the apparel and furniture of the boat at that time; I heard from Captain Sloan that they were down where he lived at Amherstburg, Canada West; I first examined the apparel and furniture of the boat some ten days after we examined the boat. No person was with me when I made the examination; a young man named James Parks had the key of the warehouse when it was stored, and went with me to show me where it was. It was generally understood
20 that the apparel and furniture of the boat was at Amherstburg.

I don't remember from what particular source I got my information. $6,000 was the price for the vessel, with the apparel and furniture. I reported to Captain Robins the result of my examinations and inquiries, as he was at St. Joseph's in active business, and was more likely to get the letters than any one else of the company. Mr. Parmalee and Mr. Hull lived out of town. I wrote to Captain Robins more than to the others, but the intention was that he should communicate with them. I did not preserve any of the letters, either those I sent or received. The letters I received, I presume, were destroyed. After I first went to Detroit to examine the vessel, I remained in Detroit about two weeks. I was then this business. I had not satisfied myself; I had not got my errand done. Mr. Parmalee remained there, I think, two or three days. No conclusion had been arrived at about taking the vessel before Mr. Parmalee left

Detroit. No conclusion had been arrived at, as between him and me. Mr. Parmalee wrote to me on his return to St. Joseph. I will not be able to produce that letter. He wrote to me to make further investigation in reference to her capacity in different points, that we did not satisfy ourselves of whilst he was there. These points were principally her speed and carrying capacity. Whilst I was in Detroit, and during the examination of the vessel, I received letters from no one but Captian Robbins and Mr. Parmalee. I cannot produce the letters. The substance of the letters from Captain Robbins were principally respecting the capacity of the boat, her fuel, whether she would be economical, and her speed. The letter from John Martin was written to me after I had returned from St. Joseph and gone back to Detroit. On my return I remained at St. Joseph's one day and two nights. I returned to Detroit in behalf of the same parties for whom I had gone before, and for the purpose of commencing the repairs on the boat. Four or five weeks afterwards Captain Robins and Mr. Martin examined the boat in Detroit. I understood that the vessel had been sunk there during a severe storm.

(The proctor for the libellant objected to the last answer, as not being made from the knowledge of the witness.)

I saw her after she was sunk several times, before she was
21 pumped out. She was lying at the same place where I first saw her. Mr. Clark, owner of the dry dock, first took the job of raising her, but he did not succeed. I did not see him at work, attempting to raise her. After he got through, I undertook it. The vessel was raised by men and pumps. I employed about 30 men. It took the afternoon, evening, and till about two o'clock in the afternoon of the next day. It cost in the neighborhood of $50. $49, I think it was, for the men, working by the hour. This raised her so that we got her away, but did not pump her out. I got a certain amount from Mr. John Martin, of St. Joseph, but not for that particular purpose. This I applied for that purpose, for the time being. After the vessel was pumped out, she was taken to the ship yard of Stewart McDonald, near the city of Detroit. Two or three days may have elapsed after I last saw her before the sinking of her, already herein spoken of. I had not visited her for two or three days prior to the sinking. I don't think I had, when I saw her after she was sunk. I don't think she was filling with water. I did not discover that she was damaged by sinking, except that we had to employ two men for about twenty days in bailing and pumping the water out of her, to get her dry. These men were not constantly employed at this work, they were assisting carpenters part of the time. From the time of my first seeing her, last spring, up to the present time, she has not gone into the dry dock. No repairs were made to the hull of the vessel. The deck was repaired a space of, probably, 30 feet long and 4 feet in width—was made new altogether—and some patches in other places, not to amount to anything; probably $30 would cover all that was done to the deck. This work was not, in my judg-

ment, caused by the sinking of the vessel; it was required because the old deck was rotten, and had holes through it. There was not, I suppose, between the value of the vessel the last time I saw her before she was sunk, and her value when brought to McDonald's yard for repairs, any material difference. I did not observe any material damage, as I have said before, occasioned by her sinking. There was damage done to the deck by cutting holes to put the pumps through. The damage done from this cause was so trifling as hardly worthy to be estimated. There was no other damage that I observed. I think it
22 was about ten days, from the last time I saw her, before she was sunk until the time she was taken up to McDonald's dock; during this time I went home to St. Joseph, Michigan. This was the time, I have already stated, when I was at St. Joseph a day and two nights. She had been sunk before I returned to St. Joseph, and went back. I had learned of her being sunk before my return from Detroit to St. Joseph at that time. None of the apparel and furniture belonging to the boat which I saw at Amherstburg was put on the boat, except one broken anchor, a steering wheel, a carpet, and a few hold sheets. An allowance was made for the portion of the apparel and furniture left at Amherstburg. I do not remember the exact amount. I think this allowance was not over $200. I received from the different parties engaged in the enterprise about $1,200; part of it to apply on the first payment; part of it for my expenses, and part of it for repairs to the vessel; of this John Martin paid, at one time, $50, and afterwards $200. The $50 was paid me the 24th of April last, and I think the $200 came the 17th day of May, 1862. The cash book which was kept I intended to have to assist me, but it has not been found. Mr. Teetzel says that it is either in his house or in Detroit. All the money came to me from Captain Robins, except the $50 I have already stated as paid by John Martin; also the $200 likewise paid me by John Martin. I received $500 of Captain Robins May 10, 1862; at another time, May 10, 1862, I received from him $427, or thereabouts. This last sum was in the shape of a certificate of deposit. $1,000 of the money I have mentioned was received by a loan from a bank east; this was the Bank of Cape Cod. The money was deposited at Hoyt's Bank, in St. Joseph. I got an eastern draft for the $500 above spoken of, and I got a certificate of deposit for the $427. I got this certificate of deposit cashed at Ives's Bank, in Detroit. Of the $1,000 above spoken of, a loan of $50, previously advanced to me by John Martin, as I have already stated, was repaid; also the exchange paid for the eastern draft of $500, which amounted to $2 50. From the $1,000 I have already spoken of was also deducted $20 50 on the note of $1,000 negotiated and discounted by the Cape Cod Bank already spoken of. It was a joint note of George Parmalee, Charles Shell, Henry C. Morton, Nathaniel Robins, Luke Hickey, and ———— Nickerson. I forget when the note was executed—on or
23 about the 23d of April, 1862. This note was given for the purpose of raising money to invest in steamboat property.

The steamboat Mohawk was in question at that time. I did not expect much of the money, it was not thought best. I paid out of it my own board, the mates board, and some other little things, and left the rest on deposit. I paid over the balance to Matthias Teetzel, on a final settlement. I considered myself as acting as master of the steamboat Mohawk, from the 26th day of April, 1862, and I expected to receive the current wages as master; this is about $100 per month. I acted as master of the boat about three months and twenty-four days; this was until she was finally laid up, except the last trip which she made to Chicago and back.

Question by sol'r of libellant. State whether or not anything is due you for services as master of the steamboat Mohawk?

(Question objected to by D. A. Winslow, on the part of counsel of respondents and claimants for irrelevancy.)

Answer. I suppose there is. I have not been paid in full. I have been paid in part. I have not applied to any one for payment. The subject was brought up by Matthias Teetzel, in conversation; he thought I ought to throw in the balance of my wages, because the enterprise was an unfortunate one for all concerned. I have not thrown it in, but was disposed to argue the point. I was retained by George J. Fellers to act as master of the Mohawk, but not by Sloan. There was no bargain between Fellers and me. It was reported to me by Sloan that the sale was made by him to Fellers. I was ignorant of the sale until I heard it was made. I heard that immediately or within a day or two after the boat was pumped out, and after it was got to McDonald's dock yard. I remained in the employment of Fellers up to the 18th day of June, when Matthias Teetzel effected the purchase of the boat from him.

Question by sol'r of libellants. The cost of the boat, on the 18th of June, 1862, was how much?

(Question objected to by D. A. Winslow, on part of respondents and claimants, for it does not appear that he knows or has the means of knowing what the cost was.)

Answer. I should think it would be in the neighborhood of $9,000 or $10,000. The boat was $6,000; the carpenter's work was about $1,000, which included blacksmithing. I cannot get at the
24 amount with certainty. The Detroit Locomotive Work's bill for engine work was about $700. The bill for the smoke-stack, and for other work done at the shop of A. C. Porter, was $300. The bills for mattresses, pillows, sheets, pillow-cases, &c., was somewhere near $800. The bill for curtains was about $40. We had one sofa in the boat, worth $20. There were no hair-bottomed chairs. There was one life-boat on board, costing $165. There was one other boat, a wooden boat, worth about $15. I settled with Engineer Hewett for all his services for the whole time that he worked on the boat. His bill was $2 50 der day. Fellers was to pay for the work on the machinery. The engineer's bill was a set-off to something else. The items above enumerated were embraced in my estimate of $9,000 or $10,000 as cost of boat, except engineer's wages. I bought

a part of the articles above enumerated, and had them entered on Mr. McDonald's pass-book, and some I bought on Mr. Fellers's orders. Mr. Fellers never paid me anything for my services as master of the boat. John A. Sloan gave us his terms for the boat; this was before any repairs were commenced on the boat, and before she was sunk. After this I went to see him some half dozen times prior to the sinking of the boat. My object in seeing him at these different times was to get him to reduce the amount of the first payment. He finally fixed it at $500 down, and the balance of $2,500 to be paid on the first of October, 1862, and $3,000 on the first of October, 1863, with interest at ten per cent. on the deferred payments.

Question by sol'r of libellant. What was the nationality of the vessel at the time above spoken of when the terms were fixed?

(Objected to by D. A. Winslow, on part of respondents and claimants, for the reason that the papers are the best evidence.)

Answer. Her nationality was British, as I understood it.

Question by proctor of libellant. State whether or not the subject of the trade in which you designed to use the vessel was mentioned by you to Sloan in your interviews as to the purchase of the vessel, or at any of them?

(Objected to by D. A. Winslow, on part of the respondents and claimants, as being irrelevant.)

Answer. It was.

Question by proctor of libellant. How, if at all, did he (Sloan) propose to obviate the difficulty of so using a vessel of British bottom in American waters in carrying on trade between two American ports?

25 (Question objected to by D. A. Winslow, on part of respondents and claimants, because of irrelevancy.)

Answer. He proposed changing her nationality, or getting it done. Sloan made very light of the operation at the time; he said he would attend to that. I presume he did give a plan; still he may have found it more difficult after he had investigated it. The Mohawk made five trips this season between St. Joseph and Chicago before she was libelled. Whilst she was running, Matthias Teetzel, George Parmalee, Warren Chapman, and John Martin were the owners. Captain Robbins withdrew and did not join; also Henry C. Morton and Charles Hall. These three last named had originally proposed to join in the purchase. There were no writings to show that I was an owner, neither in the original transfer of the boat, nor in the papers; and I was not legally an owner, although I had proposed originally to be one of the owners. The boat transported passengers, goods, wares, and merchandise when running between St. Joseph and Chicago. The apparel and furniture belonging to the boat left at Amherstburg, and which I went to see, some days after the boat was sunk, was worth between three and four hundred dollars. It was that, and the boat as it stood, that he (Sloan) had proposed to sell for $6,000. I was in at the office of William A. Moore, of Detroit, once during the negotiation with Sloan for the vessel. I

think I was in his office once before she sunk, and several times after that. I went in there first with another person. This was Captain Sloan. William A. Moore was, I think, the attorney of Capt'n Sloan; at least he was the attorney for the man for whom Sloan sailed, and I suppose that he did business for him.

On cross-examination by Damon A. Winslow, esq'r, counsel for the respondents and claimant, the witness testifies as follows, to wit:

At the time I went to examine the boat, I could examine, and did examine, about thirty feet in length by about fifteen feet in width, up to the floor of the forward hold. This was on the inside. On the outside I merely looked along, except the wheel; I got into that. I did not examine her machinery. I could not see much of it. It was in a dark, rusty condition. There was no smoke-stack in the boat from the deck up when I went there. Her bulwarks were pretty much all gone on one side. She was pretty badly wrecked all around; I allude to her upper works. There was no cabin to speak of, 26 except the lower cabin. There was a few rooms for the officers on deck. These rooms were in a dilapidated condition. They were not fit to use as they were then; they would not keep the storm out. The wheels were pretty badly wrecked. A good many of the arms were rotten. The buckets had to be all renewed. Five or six at least of the arms in each wheel had to be renewed. A new ceiling and floor had to be put in. There were new hatches made for our own convenience. My reason for stating, as I did in my direct examination, that there was not much water aft, is, that the water was not upon the floor. The floor was about two feet and a half high from the kelson. The kelson is two inches higher than the bottom of the hold. It was not possible for me to tell whether the after part of the boat, and under the boiler, and engine, and coal bunkers, was seaworthy or not. Mr. Parmalee and myself were sent to Detroit simply to make examinations, and to see what we could do. We were not instructed to buy the Mohawk. We had orders to look at other boats as well as the Mohawk, if we did not like her. The indentations I spoke of in my direct examination had this effect: in one place I saw the plate was cracked. The parties whom I represented in Detroit did not authorize me to raise that vessel. When I was raising that vessel, I volunteered to work raising it. I did not suppose that we would be at the expense only for the time being. I did it to facilitate the repairs. They could not be made as the boat then lay. When I first saw the boat there was a clump of rooms, including one drinking saloon, on her upper deck. A good portion of her upper works she had lost. From appearances, the portion of her upper works gone might have been taken off, or might have blown off. The stanchions were gone from under the deck on one side, and the roof had fallen down. The cranes, boats, and anchors, all but one crane, were gone when I first saw the boat. I have sailed about twenty-two years, pretty much all of the time as a seaman.

Question by counsel for claimants, &c. Did you consider the boat, when you first saw her, seaworthy or a wreck?

(Question objected to by proctor of libellants.)

Answer. I considered her a wreck, and unseaworthy in that condition. All that I could see about her that was seaworthy was her hull, and that only, so far as I could see it. I never perfected a trade with Captain Sloan, according to the terms proposed by him hereinbefore by me stated, nor on any other terms. I never bought the boat of
27 anybody. I can't say that I ever was employed as master of the Mohawk. It was spoken of in Captain Robbin's warehouse, but that was in case the first parties should buy the boat. This was about the 3d of April—that is, I was to be master of whatever boat these parties should buy. I had charge of the vessel under Mr. Fellers when Mr. Teetzel went out and bought her. Whilst I was acting as master, I went to these parties with a written proposition from Mr. Fellers for the sale of the boat. This proposition was not particularly directed to these parties, but was for them, or any other who might wish to buy.

Question by counsel for claimants, &c. Was not this proposition the basis on which the present parties or company purchased the boat?

(Question objected to by proctor of libellant.)

Answer. It was. The price of the boat to the present owner was $6,000.

On direct examination of the witness being resumed, the witness testifies as follows:

There was no change in the terms from the terms of the last proposition made by Sloan; none that I am aware of. When I went and examined the boat, I reported to the parties that it would cost from $300 to $500 to fix her up, so as to bring her to St. Joseph, Michigan. I did not estimate that the above amount would fit her for the trade between Chicago and St. Joseph. I don't think I made any estimate to fit her for this trade. It was designed to fit her up whilst she was running in the trade, which the owners thought could be done, but I did not agree with them. I had commenced repairing her upper works before I wrote to them. In describing the vessel on my cross-examination, I meant that she had become inferior or damaged from age and abuse, not by reason of shipwreck, but she appeared to have been damaged by collision or other violent cause. The hull was not repaired by reason of any dinges in it.

On second cross-examination, the witness testifies as follows, to wit: The design of the parties to repair her upper works whilst she was running was before the present owners bought her of Fellers. In my estimate of the cost of repairs to bring the vessel round to St. Joseph, it was independent of the repairs of the machinery, which the seller agreed to make. The vessel had the appearance of having something forced through her upper deck, and I supposed from the appearance that it must have been a jib-boom.

(Signed) L. HICKEY.

28 And the said Henry C. Morton, being duly sworn, deposes and says: My age is forty-five years; my occupation is that of a farmer; and my residence is in Benton township, Berrien county, Michigan. I signed a note with George Parmalee, Nathaniel Robbins, Charles Hull, and John Martin, and Warren Chapman, for the amount of $1,000, for the purchase of the Mohawk. The note, I suppose, was sent to an eastern bank. I suppose the money was raised on the note by its being discounted. I suppose that the money was applied to the purchase of the Mohawk, but I do not know it of my own knowledge. The note was dated in March or April, 1862, I think. I had something to do with a draft sent by Mr. Chapman to meet his share of the note. The payment of the note was assumed by the owners of the Mohawk, the present owners.

On cross-examination by the counsel for the respondents and claimants, the witness testifies as follows, viz:

No one who had signed the note was released from it. It was expected that George Parmalee, Matthias Teetzel, Warren Chapman, and John Martin, and probably Captain Hickey, were to assume the payment of it. I have no definite recollection of the conversation that passed between me and Matthias Teetzel on the subject of his assuming to pay a part of this note.

(Signed) HENRY C. MORTON.

And the said Nathaniel Robbins, being duly sworn, deposes and says: My name is Nathaniel Robbins; my age is thirty-two years; I reside in St. Joseph, Berrien county, State of Michigan; my occupation is that of a sailor, but I have not sailed any during the year last past. I knew the steamboat Mohawk. I first saw her in Detroit, Michigan, on the 26th day of May, 1862. I and John Martin went to Detroit to examine the boat; I was about to take an interest in her. I had previously been concerned with Charles Hull, Henry C. Morton, George Parmalee, Luke Hickey, and John Martin, in arrangements to buy a steamboat; one purpose was to buy a boat if we could find one to suit us. We heard of the steamboat Mohawk. We heard from my uncle, who made it his business on his passage east from St. Joseph to look for a boat for me: he heard of this amongst several others, and wrote to me about it.

29 (The witness now produces the letter marked by the commissioner Exhibit A, which he received from his uncle, and testifies:)

This letter referred me to the owners—that is, to those supposed to be the owners of the Mokawk, Parks and Brother, of Malden, Canada West. I wrote to Parks and Brother, and they passed my letter to John A. Sloan, and he answered it. He wrote to me about the latter part of March, 1862; this letter was to me alone; this was previous to my saying anything to any one. If I remember right, I gave the letter to Captain Luke Hickey to take to Detroit as a sort of introduction; whether he gave it to me again I cannot say. I have

searched my house very thoroughly for the letter, wherever it would be likely to be, but am unable to find it; it would be there if it were in my hands. The reply of Sloan to my letter to Park and Brother, already testified about by me, was, that he owned the boat; that he had bought her of Parks and Brother, and that she was for sale, if applied for soon. He did not in that letter state the price of the boat. I addressed Sloan in Detroit, but he was living in Malden, Canada West; he (Sloan) was running the boat, and could get his letters every day at Detroit. I received from him two letters, and wrote one to him, besides the one I wrote to Parks and Brother; that he answered. I did not preserve copies of the letters I wrote. The letters I received from him, I am not able to say what has become of them; I think I gave one of them to Captain Hickey, and the other cannot be found. In reply to Sloan's first letter, I wrote to Sloan, asking or inquiring the capacity of the Mohawk, her tonnage, speed, and how much fuel she used, &c.; also his lowest price, and terms of payment. I mentioned in my letter the trade we proposed to run her in; that was between St. Joseph, in the State of Michigan, and Chicago, in the State of Illinois. His reply to my letter answered the questions that I asked, and said we could have her for $6,000, half cash, and the balance in one year, or in one and two years, I am not sure which. He told me in his letter that I would find the boat in Detroit; he stated in the letter that the boat would need some repairs, but did not say to what extent, nor did he propose to make them. I received this letter about the last of March, or first of April, 1862. The matter then dropped for awhile. I did not make any arrangement to raise money to get a boat; the money was then already raised for me to buy a boat, as I had proposed to do, to sail myself, if I could find one to suit me. Afterwards, a short time, I told Captain Hickey what I knew about the price and terms on which the Mohawk could be got, and described her as she had been described to me by Sloan. Captain Hickey made inquiries to see if we could raise a company to buy her. Captain Hickey was out of business, and was to sail her if we succeeded in getting her. We got a company of five; these were Charles Hull, Henry C. Morton, myself, Captain Luke Hickey, and George Parmalee. We supposed we would have to pay $3,000 cash, if the boat suited; before we sent men to examine her, we thought we would try and see whether the $3,000 could be raised. We called on Elkanah Nickerson to see if we could raise the money through him; we knew we could if we could get his name to the note, andmake him satisfied that it would be paid at maturity. We stated the case to him, and he concluded to do it. Then Captain Hickey and Mr. Parmalee went to Detroit to examine the boat; Mr. Parmalee returned in three or four days, and Captain Hickey remained at Detroit. It was in April that Mr. Parmalee returned from Detroit, but I cannot fix the exact date. He reported that the hull of the boat was good, and he thought she would be profitable if she would not be too expensive for fuel; that he could not learn anything about. Captain Hickey wrote me

several letters whilst he remained in Detroit; these letters were handed round from one to another; one would answer for all; these letters were some of them destroyed, and the rest I do not know where they are. In searching this morning in my house, I did not find any of them. Captain Hickey, in his letter, reported favorably to the purchase; in the mean time, Mr. Hull and Mr. Morton did not want to take their interest in the boat if others could be found to take them. Warren Chapman, who had examined the boat, and John Martin were found, and took the places of Mr. Hull and Mr. Morton, and made the company full again. Captain Hickey, in the mean time, had made a new bargain: this was to get the boat at the same price, but on paying only $500 cash, and the balance on time, by giving their individual notes, with security, each for his own individual share; these terms by the company during the time of his stay in Detroit I have already spoken of. He returned once or twice to St. Joseph; he acted for the company by their consent in the purchase of the Mohawk. When he first returned from Detroit, he came to see whether money could be raised to apply on the boat and her repairs by the new company. He thought we could get along with $1,000 to make the first payment on the boat and
31 repair her sufficiently to get around to St. Joseph. Captain Hickey said that the terms of the bargain for the boat was, that Sloan was to repair her, so far as her machinery was concerned, so as to put her in running order; her price was $6,000, so repaired. We made a note of $1,000, executed by Henry C. Morton, Charles Hull, Warren Chapman, George Parmalee, Luke Hickey, John Martin, and myself; the date of the note was left blank, to be filled up when discounted; this note was signed the latter part of April; it was sent east, and discounted in the Bank of Cape Cod; I sent it. When Captain Hickey first returned to Detroit, he took back with him money, I do not know how much; John Martin let him have $50 for incidental expenses. Nothing was said at that time, or at any other time, about pumping her out, as she was to be delivered to the company in running order, and with American papers.

Question by p'r of libellant. State whether or not in any of the letters above spoken of a plan or plans were mentioned for getting such American papers.

(Question objected to by D. A. Winslow, esq., on part of the respondents and claimants, for irrelevancy.)

Answer. I cannot say that any of the letters did give any specific plan.

Question by p'r of libellant. State if you learned from Capt'n Hickey, or any of the parties in interest, how it was to be done.

(Question objected to by D. A. Winslow, esq., on part of respondents and claimants, for irrelevancy.)

Answer. There was something that did not interest me, nor those that were to be interested in the boat, the company, as she was to be delivered to the company an American boat. Captain Hickey told me that a vessel in a British bottom, in a wrecked condition,

could be changed to an American bottom by laying out on her a certain amount in repairs. All I knew about the matter was from hearsay. By hearsay I mean what I have stated Captain Hickey told me. We left it to Captain Hickey to make the repairs that we were interested in, as he was on the spot. All the way I heard how the nationality of the vessel was to be changed was from Captain Hickey. Capt. Hickey told me that when he went to Detroit the second time about the vessel he found her sunk. I understood from him that the vessel had been sunk by a very tempestuous storm. I first saw the boat about the 26th day of May, 1862. At that
32 time I saw John A. Sloan in Canada, in Windsor. I went over with John Martin and Captain Hickey to see what caused the delay in getting the license and enrolment of the vessel. We knew it was necessary to get her nationality changed so as to get her license and enrolment. They were to deliver her to us with her nationality changed, and we were waiting for them to do so. We saw other parties for the same purpose. These were George Fellers and William A. Moore, a lawyer in Detroit. Sloan referred us to Mr. Moore, saying that everything was being done that could be done, and as fast as it could be done. We told Sloan we were anxious to get away. I don't remember that he said anything about the sale of the boat at that time. In the interview between William A. Moore, John Martin, Captain Hickey, and myself, Capt. Hickey inquired of Moore whether the papers had gone to Washington—bills, &c. He said they had; that they had been sent the day before. I think Captain Hickey suggested the idea to write to Senator Chandler to hurry the matter up a little, to get through quick, so as not to detain the vessel. I think there was no conversation between Martin and Moore at that time, but I am not certain. After Captain Hickey had been to Detroit and first returned, as already stated, to St. Joseph, he said that he thought that $500 in addition to the repairs that Sloan was to make, as already stated, would be sufficient to get the vessel to St. Joseph. The boat was to be brought to St. Joseph as soon as she could be repaired sufficiently; they expected it would take two or three weeks, and then Captain Hickey was to bring her on. Capt. Hickey took down one joint note when he went to Detroit, except as to John Martin; he, Martin, sent his separate note. The joint note I speak of was for four-fifths of $5,500; John Martin's note was for a separate one-fifth of $5,500. There were two joint notes—one of them payable on the 1st of October, 1862, and the other payable in one year from that time. The separate note of John Martin spoken of was rather two notes, payable respectively at the same time with the joint notes. Capt. Hickey took these notes to Detroit when he went the second time, or we sent them to him, I don't recollect which; if sent, they were sent soon after he left. All these notes were made payable to John A. Sloan. I understood from Capt. Hickey that Sloan was to furnish for the boat the furniture that belonged to her. He had taken an inventory of that previously. This furniture was included in the price of the

boat, and was, in fact, a part of her. The boat laid there
33 longer than we expected, so that the $500 first estimated for repairs to get her to St. Joseph would not reach, as Capt. Hickey kept on making repairs whilst she laid there. Some of the repairs made there, because of her lying there so long, were designed to have been made at St. Joseph.

Question by p'r of libellants. What, in your judgment, was the cost of the repairs put on the boat to bring her to the condition in which Sloan was to deliver her to your company?

(Question objected to by D. A. Winslow, esq., on behalf of the respondents and claimants, because, first, of irrelevancy; and, second, that it does not appear that the witness is acquainted with that kind of work; and, third, it appears that the witness never saw the boat until most or all of these repairs were made.)

Answer. The repairs that Sloan was to put on were to be the machinery. I should say the amount would be six or eight hundred dollars, but I am not a competent judge of the cost of these repairs, and I would be as likely to get it twice too much as half enough. I think I have heard them say that this was about the amount. Of the proceeds of the note sent east to be discounted I paid John Martin $50 00; I procured an eastern draft of $500; I deposited $427; I paid ½ per cent. exchange on the eastern draft of $500 00, which made $2 50; the discount on the note was $20 50. I sent the draft and certificate of deposit both to Captain Hickey. I sent them to him to apply on purchase money and repairs of the steamboat Mohawk. The present owners of the Mohawk have assumed the payment of that note of $1,000, from the fact that they have paid a part, and saying they would pay the balance.

When the papers returned from Washington, on or about the 14th day of June, 1862, there was an attorney from Detroit came here with Captain Hickey; I do not remember his name; I believe he was a partner of William A. Moore; he came to examine the securities for the boat, and to take them, if satisfactory, to the owner. The balance of the company could give their securities, but I could not, so I was left out. Then Matthias Teetzel, I suppose, took a part interest in the boat; I do not know to what extent. The fact of the boat's being a British vessel was talked over by the company and was known by them.

On the cross-examination by D. A. Winslow, esq., on part
34 of the respondents and claimants, the witness testifies as follows, viz:

I know that the company knew that this was a British vessel in the same way that I did; that is, by report. The security required, and which the lawyer from Detroit came to examine, was unincumbered real estate, to, I think, enough to secure the payment of the notes. I don't know to whom the security was made, but I believe it was to George Fellers. The notes that I have already spoken of were made payable to John A. Sloan. These notes were destroyed; they were destroyed about the 14th of June, 1862; that is, about the time the

last change was made in the company. I only know what Matthias Teetzel said about assuming the payment of the $1,000: he said it would be taken care of. Mr. Teetzel said that he had paid more than his share in the boat, and that if the others had paid up as well as he had, there would be enough to leave the boat clear. I believe that all the present owners of the boat, except Matthias Teetzel, are parties to this note. Capt. Hickey went on his own responsibility, and used his own judgment, in regard to the repairs he made to the boat in Detroit. We all understood that there was a certain amount of repairs to be done, and he used his own judgment in making them, by common consent; he was supposed to have judgment enough to make the repairs necessary for this trade. I cannot say who I heard say that it cost $600 to $800 to make the repairs to put the boat in the condition that the seller agreed to put her in. I was in W. A. Moore's office during the whole time that John Martin was there; this was the time I spoke of in my direct examination—that is, I believe it was. I don't think that any conversation passed between Mr. Martin and Mr. Moore at that time. I heard all the conversation at that time between Captain Hickey and Mr. Moore. I know, through Capt. Hickey, that parties agreed to sell the boat for $6,000, and to make certain repairs on her, all for that sum. I have no personal knowledge of the transfer of this boat from parties in Detroit or elsewhere to parties here. At the time that Mr. Chapman and Mr. Martin took the place of Mr. Morton and Mr. Hull, nor before, was any company formed, except a verbal understanding that they, the parties, were to buy the boat together. It was ten days or two weeks after Mr. Morton and Mr. Hull stepped out of the company, that Mr. Chapman and Mr. Martin stepped in. This change was in April, 1862. It may have been as late as May when I
35 speak of Captain Hickey's making a new bargain in my direct examination. I mean that he got a new proposition from the owner of the boat. I do not know from whom he got it, nor whether it was written or verbal. I don't know whether the vessel was ever purchased on this new proposition by the then proposed parties. I never carried it out on my part. It was in the latter part of March or first of April, 1862, that I wrote to John A. Sloan, making inquiries as to the capacity of the vessel, &c., in answer to his letter to me. When we first united for the purpose of buying a boat, it was with special reference to the Mohawk; there was no talk at that time of any other. In the month of May, 1862. I expressed to Mr. Parmalee fears that the seller might induce Capt. Hickey to pay some of our money on repairs, and then refuse to sell, and that we would lose our money. This was, I think, before the company was formed that finally purchased the boat. I have no knowledge of any company being formed for the purchase of this boat, except as already stated.

On direct examination being resumed, the witness testified as follows, viz:

The notes brought by Capt. Hickey and the lawyer from Detroit

were, I believe, for the same amount and on the same terms as those which were to be given to Sloan, except that they were separate notes; these were the same notes made payable to Sloan. In my direct examination I think I mentioned all the changes which occurred in the parties for the purchase of the Mohawk. Those changes consisted only in the withdrawal of some of the members and the taking of their places by other persons. The remark I made to Mr. Parmalee referred to in my cross-examination was, that we had sent on our notes and money to be used when the boat was transferred to us Americanized on American bottom, and I feared that in his anxiety Capt. Hickey might pay out something for repairs before we got a bill of sale of her, and we might lose our money. I did not by that remark design any reflection on the conduct of Capt. Hickey; it was a matter of doubt whether she might be changed as to her nationality. The agency of Captain Hickey was not withdrawn at that time, or at any other. We found that he had not paid any money, except about $50, used for pumping. When my connection with the company ceased, and Matthias Teetzel became a member of it, I
36 suppose that he took my position as to any liabilities from the beginning.

On second cross-examination, the witness testified as follows, to wit:

I did not see the notes that were made at the time that Mr. Teetzel took an interest. I do not know to whom they were made payable. I did not see the collateral securities given. There was no transfer of the boat until after Mr. Teetzel took an interest, and she had not been paid for.

On direct examination resumed, the witness testified as follows, to wit:

When the lawyer from Detroit came with Capt. Hickey, he did not ask me to give notes for any larger amount, or on any different terms than those I had signed previously, to show as far as my share was concerned.

(Signed) NATHANIEL ROBBINS.

Exhibit A.

I do certify that this paper, by me marked Exhibit A, is the same Nathaniel Robbins was examined and testifies respecting in his depositions hereto annexed.

In testimony whereof, I have hereunto set my hand and seal, this 7th day of November, 1862.

(Signed) EBENEZER McILWAINE,
U. S. Com'r.

CLEVELAND, *March 17th*, 1862.

Capt. N. ROBINS, *St. Joseph, Mich.:*

DEAR SIR: The following is the information I received this morning respecting steamboats: Capt. E. B. Ward, of Detroit, inquire respecting steamboats. J. T. Miting, of Detroit, is one of the owners and agent of the boats Detroit and General Taylor, lying at Buffalo, about 350 tons burthen, which are for sale or charter; also, Mr. L. A. Pierce, who is the agent for the Detroit steamers from this place, tells me that Park and Brother, of Malden, Canada West, lying 37 about 20 miles from Detroit, on the river, have an iron steamer of about 350 tons, which the bought of they British government about 3 years since, and which has been lying idle for two years, having nothing for her to do, which he thinks would be suitable for that business, and could either be bought or chartered very reasonably. This latter case appears to me the most feasible; she is a side-wheel steamer. You could correspond with some one in Detroit that you might know, to ascertain more definitely the condition of things, or with the parties at Malden, and then if they thought best, visit them at Malden. I came from Elyria here this morning; expect to leave for home this evening at 9 o'clock.

Miss Lucy Smith is at L. A. Pearce's, he tells me. I parted with her at Clide on Friday night, when I took another train for Sandusky. I expect to reach home to-morrow, between four and five o'clock p. m., if nothing prevents.

Say to brother E. that I have heard of D. Nickerson here, but have not yet seen him; am told that some three years ago he had $20,000 worth shipping here, but had been very unfortunate in losses; bought a farm down near Plainville, some three years ago or more, but has since sold it, and has again moved to this city, and talks of again sailing on the lakes to retrieve his lost fortune. So goes the world. Let me hear from you often, and of your success in obtaining a steamer. I suppose it would be best to buy if business is sure and money could be raised to pay for her. Love to all.

Truly,

(Signed) L. D. NICKERSON.

Charles Hull, being duly sworn, deposes and says: My name is Charles Hull; my age is fifty-six years; I reside in Benton township, Berrien county, State of Michigan; my occupation has been farming, until the year last past, during which I have had no particular business. I cannot say that I had any concern in the purchasing of the Mohawk. I signed a joint note to raise money for the boat; whether it was to the purchase or repairs of the boat, I do not know. The amount of the note was $1,000. At the time that I signed it the names were not all on the note of those who were to sign it. There were five of us to sign it, to wit: Capt. Nathaniel Robbins, Henry C.

Morton, Charles Hull, George Parmalee, and Capt. Luke
38 Hickey. Capt. Robbins had signed it, I think, and some others, but I do not recollect who nor how many. This note, I think, was dated some time in the fore part of April. I do not know what became of the note afterwards; I never saw it after I signed it. The expectation was that the note was to be sent east to get the money on it. I do not know who was to have charge of the money to lay it out or to expend it.

On cross-examination by D. A. Winslow, esq're, on behalf of the respondents and claimants, the witness further testifies as follows, to wit: when I signed the note, I supposed it was for the Mohawk; when the enterprise was first talked of, the object was to buy some boat; but when I signed the note, I supposed it was for the Mohawk. I do not know the situation of the parties at that time; but the money was wanted to help them, I suppose for the Mohawk. When I signed the note, I had no connection with the boat enterprise; I did not consider myself one of the parties.

(Signed) CHARLES HULL.

John Martin, being duly sworn, deposes and says:

My name is John Martin; my age is twenty-eight years; I reside at St. Joseph, Berrien county, Michigan; I am a merchant. (The respondents and claimants by D. A. Winslow, esquire, object to the examination of this witness, he being one of the respondents in this suit, and no foundation is laid for his examination.)

I know the steamboat Mohawk by seeing her. I first saw her when I went to Detroit with Capt. Robbins; this was in May, 1862. I have been concerned in a company for her purchase, to run her in the trade between St. Joseph and Chicago, composed of George Parmalee, Nathaniel Robbins, Luke Hickey, Warren Chapman and myself. This company was formed I think in April, 1862; I am not certain whether I was concerned in the company when Mr. Parmalee and Capt. Hickey first went to Detroit. I believe they went down to see about the Mohawk; this was the supposition. I heard it talked of. I believe I saw Mr. Parmalee soon after he returned from Detroit. Warren Chapman first talked to me about joining the company to buy the boat. Chapman talked very favorably to me about the boat, and advised me to become one of the company. The encouragement he gave me was this: he said that if he had the money, he would like to buy the whole of the boat; he said that he had seen the
39 boat; he described her as a good boat, suitable for this trade, and that he would not ask a better fortune than to own every bolt in her; and I do not recollect that in that conversation he told me anything as to her cost; but I have always understood, from first to last, that the price to be paid to Sloan for her was $6,000. I supposed from the conversation I heard, when I first entered into it, that Sloan was the owner. I received two or three letters from Capt. Hickey, whilst he was in Detroit; these letters were concerning the boat. I do not know where those letters are; I cannot find

them. Mr. Teetzel came after them once, but I could not find them, and did not give them to him; this was after the boat was attached. I have made thorough search for the letters, but have been unable to find them. There was one letter of them, in which was stated, that if the Lady Franklin was worth $20,000, the Mohawk was worth $30,000; that letter I gave to Mr. Chapman, to be read by the company, as well as I can recollect; any and all the letters I received from Captain Hickey about the boat were, I believe, shown to the rest of the company. Mr. Teetzel was not one of the company at that time; that was before I had seen the boat. I believe he wrote that Capt. Langley and some other captain advised him to put on her some upper cabin; that it would make her appearance so much better when coming into a strange port. I do not recollect whether these affairs were approved or disapproved by the company. I signed two separate notes of my own individually, running to Sloan; the first of these notes was, as well as I can recollect, for $500, and second for $600; the first of these notes was payable the 1st of October, 1862, and the other the 1st of October, 1863; these notes were either taken down to Detroit by Capt. Hickey or sent to him; these notes I supposed were for the purchase of the steamboat Mohawk. I supposed Capt. Hickey was acting for the company; he was to be master of the boat, as I supposed; that was talked of. I don't recollect that these notes came back to my hands. I was told that they were destroyed. I think they were torn up in my store when the lawyer from Detroit came with Capt. Hickey to take the other notes. The new notes were, I think, for the same amount, and made payable at the same times with the old ones. The last ones were made payable to George I. Fellers. I understood, when I first entered into the company, that Sloan was to put the engine, boilers, &c., in repair, and to do everything to her that was needed to put her in running order so far as related to her machinery. There was no change in the terms of purchase or as to what Sloan was to do to the boat, from first to last, so far as I know, except that the last notes were secured on real estate; the first notes were to be without collateral security; security on the last notes was exacted of me and I gave it. I had no connection with George I. Fellers in respect to buying the boat, except that I gave my note to him. I cannot explain why we gave our notes to Fellers instead of to Sloan—I will correct this; I believe I heard them say at the time, that Sloan had made sale of the boat to Fellers for the purpose of getting her Americanized. There was a change in the company after I became connected with it; the change was, that Capt. Robbins went out, and Matthias Teetzel came in. When the last notes were given, June 14th, 1862, it was arranged that, as regarded Capt. Hickey's share, George Parmalee was to take Hickey's share as well as his own, and give the security for both shares until the boat came to St. Joseph, when Capt. Hickey was to take his share, to wit, one-fifth of the price of the boat, off Parmalee's hands, and give security for his own share to Parmalee. When I gave the last notes I put them in the hands of Mr. Teetzel.

Morton, Charles Hull, George Parmalee, and Capt. Luke
38 Hickey. Capt. Robbins had signed it, I think, and some others, but I do not recollect who nor how many. This note, I think, was dated some time in the fore part of April. I do not know what became of the note afterwards; I never saw it after I signed it. The expectation was that the note was to be sent east to get the money on it. I do not know who was to have charge of the money to lay it out or to expend it.

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I know the steamboat Mohawk by seeing her. I first saw her when I went to Detroit with Capt. Robbins; this was in May, 1862. I have been concerned in a company for her purchase, to run her in the trade between St. Joseph and Chicago, composed of George Parmalee, Nathaniel Robbins, Luke Hickey, Warren Chapman and myself. This company was formed I think in April, 1862; I am not certain whether I was concerned in the company when Mr. Parmalee and Capt. Hickey first went to Detroit. I believe they went down to see about the Mohawk; this was the supposition. I heard it talked of. I believe I saw Mr. Parmalee soon after he returned from Detroit. Warren Chapman first talked to me about joining the company to buy the boat. Chapman talked very favorably to me about the boat, and advised me to become one of the company. The encouragement he gave me was this: he said that if he had the money, he would like to buy the whole of the boat; he said that he had seen the
39 boat; he described her as a good boat, suitable for this trade, and that he would not ask a better fortune than to own every bolt in her; and I do not recollect that in that conversation he told me anything as to her cost; but I have always understood, from first to last, that the price to be paid to Sloan for her was $6,000. I supposed from the conversation I heard, when I first entered into it, that Sloan was the owner. I received two or three letters from Capt. Hickey, whilst he was in Detroit; these letters were concerning the boat. I do not know where those letters are; I cannot find

them. Mr. Teetzel came after them once, but I could not find them, and did not give them to him; this was after the boat was attached. I have made thorough search for the letters, but have been unable to find them. There was one letter of them, in which was stated, that if the Lady Franklin was worth $20,000, the Mohawk was worth $30,000; that letter I gave to Mr. Chapman, to be read by the company, as well as I can recollect; any and all the letters I received from Captain Hickey about the boat were, I believe, shown to the rest of the company. Mr. Teetzel was not one of the company at that time; that was before I had seen the boat. I believe he wrote that Capt. Langley and some other captain advised him to put on her some upper cabin; that it would make her appearance so much better when coming into a strange port. I do not recollect whether these affairs were approved or disapproved by the company. I signed two separate notes of my own individually, running to Sloan; the first of these notes was, as well as I can recollect, for $500, and second for $600; the first of these notes was payable the 1st of October, 1862, and the other the 1st of October, 1863; these notes were either taken down to Detroit by Capt. Hickey or sent to him; these notes I supposed were for the purchase of the steamboat Mohawk. I supposed Capt. Hickey was acting for the company; he was to be master of the boat, as I supposed; that was talked of. I don't recollect that these notes came back to my hands. I was told that they were destroyed. I think they were torn up in my store when the lawyer from Detroit came with Capt. Hickey to take the other notes. The new notes were, I think, for the same amount, and made payable at the same times with the old ones. The last ones were made payable to George I. Fellers. I understood, when I first entered into the company, that Sloan was to put the engine, boilers, &c., in repair, and to do everything to her that was needed to put her in running order so far as related to her machinery. There was no change in the terms of purchase or as to what Sloan was to do to the boat, from first to last, so far as I know, except that the last notes were secured on real estate; the first notes were to be without collateral security; security on the last notes was exacted of me and I gave it. I had no connection with George I. Fellers in respect to buying the boat, except that I gave my note to him. I cannot explain why we gave our notes to Fellers instead of to Sloan—I will correct this; I believe I heard them say at the time, that Sloan had made sale of the boat to Fellers for the purpose of getting her Americanized. There was a change in the company after I became connected with it; the change was, that Capt. Robbins went out, and Matthias Teetzel came in. When the last notes were given, June 14th, 1862, it was arranged that, as regarded Capt. Hickey's share, George Parmalee was to take Hickey's share as well as his own, and give the security for both shares until the boat came to St. Joseph, when Capt. Hickey was to take his share, to wit, one-fifth of the price of the boat, off Parmalee's hands, and give security for his own share to Parmalee. When I gave the last notes I put them in the hands of Mr. Teetzel.

I gave him very particular instructions, once, twice, or three or four times, before he left the office, to not give my notes up, on any consideration, until he would have me properly secured against anything that might come up in regard to the boat. I instructed him to take a bond of indemnity; as they had exacted good security from me, I wanted a bond of indemnity from them. I signed, with others, the note of $1,000, subsequently discounted in an eastern bank, which has been spoken of by other witnesses. That note I supposed was given for the purchase and repairs of the steamboat Mohawk—that is, to raise money on for those purposes. The money came through Capt. Robbins, so far as I understand. I know that the morning he told me he had got the money, he came to the store and paid me fifty dollars out of it. Capt. Robbins, I suppose, intrusted the balance of the money to Capt. Hickey. I had given $50 to Capt. Hickey some time in April. I lent it on a due-bill or some kind of a writing given on the steamboat Mohawk, which due-bill I returned to Capt. Robbins when he repaid me the money, and he destroyed it.

41 At the time I let Hickey have the $50, I supposed it was to be applied to pumping out the boat.

Question by proc. of libellants. State whether or not it was known to the company that the boat was a British bottom.

(Question objected to by D. A. Winslow, esq're, on part of respondents and claimants.)

Answer. I heard it talked of and supposed it was, and that she had to get her papers. I had to get naturalized once, and I supposed that she would have to do so too. I went down to Detroit to see the boat, with Capt'n Robbins, about the early part of May, 1862. I saw it. I did not admire it for my part. It was lying somewhere about Detroit; I cannot describe the place; they were working on it. Capt. Hickey was there, and we supposed him to be in charge of it. We did not know any other as being in charge of it. I took a ride on it. It was steamed up. Probably I rode from half an hour to one hour on the boat. We were expecting the boat, one day after another, to start from Detroit for St. Joseph. We got anxious and we went to Detroit to see her, and to see what was detaining her. I suppose the same thing was detaining her that kept me from voting the first year I came here; that was, because I was not naturalized; I was not old enough when I came here to vote. The reason the Mohawk did not come was, that she had not changed her nationality. I supposed the company all understood the reason of her not coming to St. Joseph. On my return from Detroit to St. Joseph, I do not recollect that I talked with any of the company about the reason of her not coming back. I might have talked with Mr. Parmalee or Mr. Chapman, but I do not remember to have done so. They were the only ones, I believe, that were here. Afterwards, before the papers came out, I do not recollect whether I had any doubt whether they would come out or not. Before the bill of sale was made to the company I had a conversation with Mr. Teetzel in regard to the boat and in regard to the purchase. At this time it was talked of about Capt.

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Robbins going out and Mr. Parmalee and I went up to Mr. Teetzel's house. I don't recollect any talk, only for him, Mr. Teetzel, to come in as a partner, and the terms on which the boat could be got. In the purchase of the boat Mr. Teetzel was to come in as one of the company; we talked of it that night too. He was to take Capt. Robbins's place. I supposed he was to have a share of one-fifth
42 in the enterprise. He said he would not take an interest in her until he would see her first. At that time, or at any other time, I don't recollect whether there was any talk with Mr. Teetzel about the vessel being a British bottom. When I went down to Detroit, in May, 1862, I saw and was introduced to a man they called John A. Sloan. Capt. Robbins, Capt. Hickey, and myself called on him to see about the boat. I do not recollect the conversation we had with him; it was something about getting the boat's papers. I could not say what encouragement he gave. Capt. Robbins, Capt. Hickey, and myself afterwards called on a lawyer in Detroit, called William A. Moore. In the conversation with him about the boat either Capt. Hickey or Capt. Robbins asked him some questions about the boat; they talked something in regard to getting her papers and how soon they would be got, and something in that way. I could not testify exactly to what Moore said. I dont recollect of putting any questions to Moore at that time. I did not call on Moore afterwards whilst we were in Detroit. All the men composing the company and those who have retired from the company live in or near St. Joseph, in Berrien county, State of Michigan.

Question by pr. for libellant. State whether or not you authorized the filing of an answer for you or the entry of your appearance in this case.

(Question objected to by D. A. Winslow, esq'r., on part of the respondents and claimants, for irrelevancy, and there is no evidence that he ever did appear or answer in the case.)

Answer. I never did.

On cross-examination by D. A. Winslow, esq., on part of the respondents and claimants, the witness testifies as follows, to wit:

The $6,000, being the purchase money of the boat, I understood was to be paid to Sloan, until the last notes were made out; they were made payable to Fellers. It was one reason why the first notes were brought back that they were made payable to the wrong person, as I understood it. I always understood that Sloan owned the boat until the last notes were made out. I suppose that Fellers, being a Yankee, could exact better security than Sloan, who was a Canadian. The reason why the notes were brought back was,
43 I suppose, because they would not accept them without security on real estate; I suppose the new notes were made payable to Fellers, to purchase the boat. The boat was, I suppose, purchased of Fellers, as I understood it, and as I suppose all parties understood it; these notes were made and taken down by Teetzel, with Hickey, to perfect the trade we had already made with Sloan. I did not know Fellers in the transaction until the notes were given. It is more

than I understood, anything about why these notes were made to Fellers to close up the trade made with Sloan. I signed my last note here; it was two or three days, or say four or five days, before the closing of the bargain, that I gave these notes. I suppose that the old notes might have been secured by mortgage just as well as the new ones. I don't know of the lawyer from Detroit assigning any other reason for exacting new notes than to secure payment for the boat, and I don't testify that I heard that conversation. I was at Detroit but once in connection with purchasing the boat; the repairs had not all been made in the boat when I was there—the carpenters were then at work on the boat. I don't remember how long it was from the time I was there until the boat came to St. Joseph. I don't remember when the boat left Detroit to come to St. Joseph. I could not tell you at what time she got to St. Joseph. When I saw the boat in Detroit I supposed Sloan owned her. I never made a purchase of the boat of Mr. Sloan. I never saw Mr. Fellers, to make a purchase of the boat of him. I considered myself buying that boat through instructions I gave to another man. I never went there to buy the boat direct myself. I know of myself and Mr. Parmalee going up to Mr. Teetzel's house, as spoken of in my direct examination; that is the first I recollect of Mr. Teetzel's being applied to to take an interest in the boat by myself, or by any other person. I will correct this; on reflection, I think, I talked to Mr. Teetzel before that about his taking an interest in the boat; he replied, that all the objection he had to take an interest in the boat was on account of Capt. Robbins. The time that Mr. Parmalee and I were at Mr. Teetzel's house was the time the lawyer was here from Detroit, so well as I can recollect. I think it was in the evening that we went there. I don't recollect what day of the week it was. I don't recollect where the first conversation spoken of took place.

44 I don't recollect of offering to do any such thing as offering to pay Mr. Teetzel's expenses to go to Detroit, and look at the boat, if he did not like it, at the time of the first conversation spoken of with Mr. Teetzel. I did not at the same time offer to pay Mr. Teetzel's expenses to go and look at the boat, nor say that I would like to own the whole boat. I did not at that time say to Mr. Teetzel that it would be a good investment, and that I liked the boat first rate. I don't recollect of ever advising Mr. Teetzel to purchase the boat, or any interest in it; but simply told him that the boat was for sale; and told him the price, and the terms, as it was told to me. I don't recollect any conversation as to who the proposition was from. I did not say at Detroit, to Capt. Hickey, that I would rather own half of the boat than any less. I will explain what I did say. I said to Capt. Robbins, as soon as I went on and saw the boat, that I did not like her. I do not recollect whether Capt. Hickey was present. After that, I went down with Capt. Robbins, and I believe Capt. Hickey was present, round on the boat, and they said she was just the thing, and would carry so and so, and I supposed that she was. It was Robbins and Hickey, and I believe Levi Mann, that said that she was

just the thing. There never was any understanding with Mr. King, or anybody else, that I am to receive any benefit from the suit, if any accrues. Neither Mr. King, nor any other person, has assured me that I should be held harmless, if I would assist in the prosecution of this suit. I signed an agreement relating to the partnership in the management of the boat. I cannot say whether the article contained anything in relation to the purchase of the boat. This was, I think, the same evening, and just after the last notes were signed. I don't recollect of ever signing any other instrument in relation to the management of the boat.

JOHN MARTIN.

Foster J. Parks, being duly sworn, deposes and says:

My name is Foster J. Parks; my age is thirty-one years; I reside at St. Joseph, Berrien county, Michigan; I am a dealer in wood and lumber; I had nothing to do with the purchase of the Mohawk last spring in behalf of any person. By their own admissions, made by some of the different firms or companies, there were some three
45 different associations made for the purpose or with the view of purchasing the steamer Mohawk. The first company, as I understood it, was composed of Capt. Nathaniel Robbins, George Parmalee, Henry C. Morton, Charles Hull, and Luke Hickey. This company, I think, associated themselves together some time in the latter part of March, 1862. Then, about three weeks afterwards, I was informed by John Maritn, and I think by Capt. Robbins, that John Martin and Warren Chapman had entered into the company, and that Henry C. Morton and Charles Hull had gone out about the middle of June. I was informed by, I think, one of the company, by John Martin, that Nathaniel Robbins had gone out of the company, and that Matthias Teetzel had taken his place. I saw letters, but I did not read them, which were said to be in reference to the steamer Mohawk, written by parties in Detroit. I saw them in the hands of John Martin, Warren Chapman, and Capt. N. Robbins. I was informed by Mr. Martin and Mr. Robbins that the proposition was to sell them the boat, in the first place, for $6,000, $3,000 down and some time on the rest. I do not recollect how much. That was immediately on or previous to Mr. Martin's going into the company, very soon after I heard them say that the terms had been altered so that the first payment would be only $500; $2,500 to be paid the 1st of October, 1862, and I think the balance the first of October, 1863. It was generally understood during the time that she was a British bottom. I talked with Capt. Robins once about the nationality of the boat. I talked about it several times with John Martin also. I had a few words of conversation with Capt. Hickey about it. I spoke at one time to Mr. Teetzel about it. The nationality of the boat was to be changed by establishing her to be a wreck. I have always understood from all the members of the different companies that I have ever talked with that they had nothing to do with changing her nationality, but that that was done by Mr. Sloan. That his proposition

for the sale of the boat was to deliver her to the parties purchasing with her nationality changed. There were several times set when she was expected to leave Detroit for St. Joseph. She was expected to leave Detroit probably a month before she did leave. They were to receive notice when she left Detroit. The reports were current that she would leave earlier than she did. I heard the parties say that the cause of her delay in coming was that Sloan was taking measures to change her nationality.

On cross-examination by D. A. Winslow, esq., on part of
46 the respondents and claimants, the witness testifies as follows, to wit:

The time that I had the conversation with Mr. Teetzel, respecting the nationality of the boat, was before Mr. Teetzel went to Detroit to effect the purchase; he went into the partnership, that is, the arrangement for the purchase of the boat, some time between the 10th and 20th of June, 1862. I know when the written contract was said by the parties to have been made. The conversation with Mr. Teetzel was in reference to what he was going to do when he got to Detroit, in which the nationality of the vessel was mentioned. This was, I think, Sunday morning, and after the contract spoken of was made in Oliver Stevens's warehouse.

FOSTER J. PARKS.

Nathaniel Robbins, being duly sworn, deposes and says:

I have been examined on this case before. I was at that time asked to produce letters of John A. Sloan to me, but was not able to produce them. I have since found the letters, there are two of them. The first letter I received was dated March 27th, 1862, that letter I answered, and in reply to that letter got a second letter, dated April 1st, 1862. (The witness here offered two letters in evidence, which are hereto attached as part to this testimony, and marked respectively Exhibit B and Exhibit C; also the envelopes in which the letters were enclosed, likewise marked Exhibit B and Exhibit C.) The letters hereto attached, marked Exhibit B and Exhibit C, were the letters I received from John A. Sloan, and were enclosed in the envelopes bearing the marks of Exhibits B and C.

Question. State what action, if any, was taken on the information contained in those letters from John A. Sloan. State fully and at large everything done up to the time the Mohawk arrived in St. Joseph?

Answer. I replied to the first letter, inquiring the rate of speed of the Mohawk, her carrying capacity, her draught of water, her consumption of fuel, and if he would put her on the route between St. Joseph and Chicago if we did not buy her, in case she could be supported. In reply, I received the second letter, referred to as exhibit C. After that I talked with Captain Hickey and others with regard to the purchase of the boat. Captain Hickey and George

Parmalee went to Detroit to examine the boat, and they recommended the purchase of her. The question of her nationality came up at this time. I learned from Captain Hickey by letter and verbally, that she could be bought on better terms than the letter indicated from Sloan, and be delivered to us as an American boat with American papers. Sloan undertook to have that done as a part of
47 the bargain and purchase. I would not myself, nor do I believe either of the other parties would have entertained any proposition for the purchase of the boat as a British bottom. The item of nationality was deemed of more importance than the boat itself, for without it she was worthless. The expense of change of nationality was to be incurred by Sloan, and the repairs necessarily incurred to get her nationality changed, if any. I was advised that the purchase of Sloan was concluded. The payments were to be five hundred dollars down; the balance was to be paid, two thousand five hundred dollars in the October following, and the balance, three thousand dollars, was to be paid in October, 1863. I heard she was sunk. I should think it was about the middle of April I heard she was sunk. I got the information that she was sunk from Captain Hickey. I understood that if a vessel was sunk and had a certain amount of repairs put on her, it would change her nationality. I was informed she was sunk, and I supposed it was for that purpose, but I was informed that it was in a tempest. I believe I was never informed that the water was let into the vessel, but I have my own views about the matter. My views are that the sinking was done artificially. My connexion with the Mohawk ceased about the thirteenth day of June. Up to that time I supposed that John A. Sloan was the owner of the Mohawk. After the purchase from Sloan, the owners deemed it best to have some additional cabin put on to fit her for the trade between St. Joseph and Chicago. The first estimate that was made to fit her up, beside what Sloan was to do, was about one thousand dollars. That estimate we subsequently thought was less than would be required. These repairs and furniture and additions I now speak of, including furniture, was to be furnished and paid for by the owners and not by Sloan. The representations of Sloan as to speed and capacity were not sustained.

N. ROBBINS.

Sworn to and subscribed before me this third day of January, A. D. 1863.

GEORGE S. CLAPP,
U. S. Commissioner.

John Martin being duly sworn, deposes and says:

I have been examined on this case before. At that time I was asked to produce certain letters from Captain Luke Hickey,
48 and was not able to do so. Since that time I have found the letters of Captain Hickey, which I here produce. (Witness here produced two letters, which are respectively marked Exhibits D and E by me, and are introduced in evidence, and are hereto at-

tached as part of this testimony, whereupon the examination proceeded.) The letters marked Exhibits D and E, produced in evidence, are in the handwriting of Luke Hickey, according to the best of my opinion. I visited Detroit on business connected with the Mohawk in the early part of May, 1862. I was introduced to a man who claimed to own the steamboat Mohawk, and who was represented as John A. Sloan. I was introduced by Captain Luke Hickey. I had considerable talk with him about the steamboat Mohawk. I knew nothing about Mr. George J. Fellers's connexion with the Mohawk until in June, when the notes were presented to me to sign. I understood that he was advancing some paints, as a ship chandler.

JOHN MARTIN.

Sworn to and subscribed before me this third day of January, A. D. 1863.

GEORGE S. CLAPP,
U. S. Commissioner.

Luke Hickey, being duly sworn, deposes and says:

I have been examined in this case before; I am acquainted with John A. Sloan. I believe the letters marked Exhibits B and C were written by him, but I have never seen him write. The letters marked Exhibits D and E were written by me. I first saw the Mohawk about the first of April, 1862. I was connected with the Mohawk as captain from early in April until she was seized by the United States. When I first saw Sloan to talk with him about the Mohawk his price for her was six thousand dollars. The question of change of nationality was mentioned—she was then British, or was represented to be such. Sloan proposed to have the nationality changed and be responsible for making the change. In the purchase the change of nationality was very material to us, as she would be of no use to us unless that was done.

Question. State the details of the plan proposed by Sloan to accomplish the change of nationality of the Mohawk.

Answer. He intended to have her publicly known as a wreck; he proposed sinking her, to which plan I objected if it could be
49 avoided. I did not see any one sink her, but I knew she was filled with water. The responsibility and details of the management were assumed and dictated by the said Captain John A. Sloan. After she was sunk I returned to St. Joseph. The arrangement was that they were to have her pumped out before my return to Detroit. On my return I found her as I had left her. At Captain Sloan's request I hired some men and got her pumped out; there was no difficulty in pumping her out more than emptying her of the water.

Question. Do you know who went down in the hold of the boat to put the plug in the hole where the water was let in; and if so, state who it was.

Answer. I do not know his name; he was engineer of the steamboat Pearl at the time.

Question. Was the steamer Pearl the boat of which John A. Sloan was captain at the time?

Answer. It was the steamboat of which John A. Sloan was then the captain.

Question. After the boat was pumped out did you see the plug in the hole, and was there any other hole that would cause any serious leak.

Answer. I saw the plug, I did not see any other hole.

Question. In your judgment was the sinking of the Mohawk at the time spoken of caused by any storm or in any other manner than by letting in the water intentionally through the hole spoken of in which you saw the plug.

Answer. I do not think it was caused by any other means than through the orifice in which I saw the plug. The object of sinking was to carry through the purchase or arrangement made with Sloan.

Question. Was or was not the sinking of the Mohawk caused by Sloan for the purpose of making a false or simulated case, under the act of Congress providing for the enrolling and licensing foreign vessels wrecked and repaired in the waters of the United States.

Answer. It would be my opinion that it was.

Question. What was the amount of repairs put on said boat of every name, nature or description, including addition to the cabin, furniture, painting, repairs to engine and boiler, and, in fact, the whole fit-out, from the time you first saw her in 1862 up to the time she started for Chicago; and how much of it was paid or agreed to be paid by Sloan, Fellers, or any person for them, and how much by the owners; state fully and at large the whole history of sinking, repairs, and the arrangements for paying them.

Answer. My opinion is that the whole amount of bills would not exceed three thousand five hundred dollars. Of this George Fellers was to pay about thirteen hundred dollars, which was that portion which was for repairs or machinery; the balance was paid and assumed to be paid by the owners; the remainder of the fit-out, after she left Detroit, was put on her at Chicago and was paid for by the owners; the pumping cost about fifty dollars, which was allowed by Sloan or Fellers in settlement with the owners.

Question. Are you quite certain that Sloan and Fellers's portion of the repairs did not exceed the sum of two thousand dollars?

Answer. I am certain that it did not.

Question. From your knowledge of the repairs done and the circumstances, is it your belief, or are you of the impression, that George J. Fellers ever paid, or agreed bona fide to pay, the sum of four thousand dollars for repairs done by Stewart & McDonald on the Mohawk.

Answer. It is not my belief that he did.

Question. From your knowledge of all the circumstances, is it your impression or belief that a bona fide sale of the said steamer Mohawk was, on the 12th day of April, A. D. 1862, made by the said John A. Sloan to the said George J. Fellers for the sum of twelve hundred dollars?

Answer. It is my belief that there was not any such sale bona fide.

Question. State when the Mohawk started from Detroit in 1862, and the date, as near as may be, of each time she left each port from that date until she was seized, and what she carried, and her average rate of speed.

Answer. The steamer Mohawk left Detroit on the afternoon of the 19th day of June for Chicago; she arrived in Chicago about Tuesday, the 24th day of June; she left Chicago for St. Joseph on the 25th day of June, 1862, at night; she returned from St. Joseph to Chicago on the night of the 26th of June, 1862, and she left Chicago again on the 27th day of June, 1862, for St. Joseph. Returning she left St. Joseph for Chicago on the night of the 29th day of June, 1862; she left Chicago for St. Joseph again on the night of the 30th day of June; she left St. Joseph for Chicago on the night of July 1st, 1862; returning she left Chicago for St. Joseph on the night of the second day of July, 1862; she left St. Joseph for Chicago on the night of the third day of July, A. D. 1862; she left Chicago
51 for St. Joseph on the fourth day of July, A. D. 1862; she returned to Chicago from St. Joseph on the night of the sixth day of July, 1862; she returned from Chicago to St. Joseph on the night of the seventh day of July, 1862; she left St. Joseph for Chicago on the night of the eighth day of July, A. D. 1862, and left Chicago again for St. Joseph on the night of the ninth, and was seized at St. Joseph on the 10th day of July, A. D. 1862, at about 4 o'clock in the afternoon. She carried, each trip, from Chicago to St. Joseph, passengers and general merchandise. From St. Joseph to Chicago she carried lumber, wood, &c., and passengers. Passengers paid their fare. Her average speed was seven miles per hour. William A. Moore, of Detroit, was the attorney who had the fixing up of the papers for Sloan and Fellers—I mean the papers connected with her change of nationality.

L. HICKEY.

Sworn to by Luke Hickey, and subscribed before me this third day of January, A. D. 1863.

GEORGE S. CLAPP,
U. S. Commissioner.

Exhibit C.—George S. Capp, U. S. Commissioner.

DETROIT, *April 1st*, 1862.

DEAR SIR: I received your answer respecting the Mohawk. Her draft of water is, when loaded, 4½ feet. I could not think of running her on your route, as I am not acquainted there, and I expect to get the mail contract for Lake Superior on the Canada side. You speak of Capt. John Prindwell, which I know very well. Capt. Nickleson is with him and could give you some information respecting the boat.

Yours, &c.,

JOHN A. SLOAN.

(Superscription in said letter:) W. ROBBINS, *St. Joseph, Mich.*

Exhibit B.—George S. Clapp, U. S. Commissioner.

DETROIT, *March 27th*, 1862.

52 DEAR SIR: Messrs. Park & Brother received a letter from you respecting the st'r Mohawk. I bought her from them last fall; I will sell her $6,000; $3,000 cash, the balance payable in six, twelve, and eighteen months, with good security. She is 128 feet long, 20 feet beam. The last season she ran her average time was ten miles per hour. Her boiler is nearly new—used only about a year and half; her engines are below decks, so that she has clean decks, and will carry over 100 tons freight; she is built of iron and in good order. She is lying at Detroit, and can be seen at any time you choose to come over within the next 30 days; inquire for me at Edward Sheppards's carpet store; if you should write to me, direct, Capt. John A. Sloan, Detroit.

Yours, respectfully,

JOHN A. SLOAN.

(Superscription in said letter:) N. ROBBINS, *St. Joseph, Mich.*

Exhibit E.—George S. Clapp, U. S. Commissioner.

DETROIT, *April 28th.*

JOHN MARTIN, Esq're,

D'R SIR: I have drew on Mr. Hoyt for the $150 to-day, for the reason that I have had to pay a great many little things for Capt. Sloan, of which I charge him with on ac't. He is busy running his boat, and everything is left to myself. The boat is at the ship yard, and the carpenters and machinists are hard to work; and everything is going on nicely. I pride myself with the idea that we will have a boat worth $15,000, when she leaves here, as well as one cent is worth another, and for our trade better worth $30,000 than the Lady Franklin is worth $20,000. You must not expect that I can afford to write you all every day; I will write some of the Co., and you must hand it around.

Yours, very truly,

L. HICKEY.

Exhibit D.—George S. Clapp, U. S. Commissioner.

53 DET., *Sunday, p. m.*

Capt. JOSEPH ROBBINS,
St. Joseph, Mich.,

DEAR SIR: I arrived all right on Saturday morning, and found the boat full of water as I left her. The parties that was to pump her out failed to do so according to promise. Capt. Sloan is busy running his boat, so I went to work yesterday, at his request, and got fifteen men and started the work. I will have her up to the machine shop to-morrow noon, and they are all ready to commence on her.

strong. If I had not come back when I did, we would be very much behind what we now are.

Everything shall be driven like h—l, brave boys; pass this around, as I cannot afford to write all of you, one letter must answer the whole steamboat Co.

Yours, in haste,

L. HICKEY.

Judgment, entered March 18, 1863.

THE UNITED STATES OF AMERICA, *vs.* THE STEAMBOAT MOHAWK. } In admiralty.

This cause having been heretofore argued by the counsel on either side, on the libel and answer, and submitted to the court for decision, and mature deliberation being thereupon had, it is considered and adjudged by the court now here that the libel in this case be and the same is hereby dismissed: and it is hereby certified that it appeared to the court, on the investigation of this case, that there was probable cause for the seizure of the said steamboat Mohawk.

Libellant's claim of appeal, entered March 25, 1863.

THE UNITED STATES OF AMERICA, *vs.* THE STEAMBOAT MOHAWK. } In admiralty.

54 Alfred Russel, U. S. attorney, comes into court and gives notice of an appeal in this case to the next circuit court of the United States for the seventh circuit and eastern district of Michigan.

District court of the United States for the eastern district of Michigan.

I, John Winder, clerk of said court, do hereby certify the above and foregoing document or record to be a transcript of the record of the said court in the cause named at the beginning thereof; and that the same is made up pursuant to Rule LIII of the rules of the Supreme Court of the United States for regulating proceedings in admiralty.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Detroit, in said eastern district, on this twenty-third day of April, in the year of our Lord one thousand eight hundred and sixty-three, and of our independence the eighty-seventh.

[SEAL.]

JNO. WINDER, *Clerk.*

Judgment and decree of the U. S. Circuit Court.

Circuit court of the United States for the seventh circuit and eastern district of Michigan.

At a session of the circuit court of the United States for the seventh circuit and eastern district of Michigan, continued and held, pursuant to adjournment, at the district court-room in the city of Detroit, in said district, on Thursday, the fifth day of November, in the year of our Lord one thousand eight hundred and sixty-three. Present: Hon. Noah H. Swayne, one of the associate justices of the Supreme Court of the United States, and Hon. Ross Wilkins, district
55 judge, in the case of

THE UNITED STATES OF AMERICA, appellants, *vs.* THE STEAMBOAT MOHAWK and her engine, boats, tackle, apparel, and furniture, appellee. } On appeal from the district court of the United States for the eastern district of Michigan.

This cause having been argued by counsel on either side at the last term of this court, and the record and proceedings of the court below being seen and inspected, and mature deliberation being thereupon had, it is now, by the court here considered, adjudged, and decreed that the judgment and decree of the district court of the United States for the eastern district of Michigan, between the parties aforesaid, be, and the same is now, by this court here, affirmed; and that the libel in this cause be, and the same is hereby, dismissed.

And it is hereby certified by this court that it appeared to this court, on the hearing of this cause, that there was probable cause for the seizure of said steamboat Mohawk and her engine, boats, apparel, tackle, and furniture by the collector of the port and district of Detroit.

And hereupon, in open court, Alfred Russell, esq'r, the United States district attorney, takes an appeal from the judgment and decree of this court in this case to the Supreme Court of the United States, and the same is by this court allowed.

Circuit court of the United States for the seventh circuit and eastern district of Michigan, *ss:*

I, William D. Wilkins, clerk of said court, do hereby certify the above and foregoing to be a true transcript of the record and proceedings and judgment of said circuit court of the United States in the case of The United States of America, appellants, against the steamboat Mohawk and her engine, boats, apparel, tackle, and furniture, appellee, and the appeal taken and allowed therein; that I have compared the same with the original, on file and of record

56 in my office, and find the same a true transcript thereof, and of the whole of said original record, proceedings, and judgment, &c.

In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court of the United States for the seventh circuit and eastern district of Michigan, at the city of Detroit, in said district, this twentieth day of November, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States of America the eighty-eighth.

[SEAL.]

WM. D. WILKINS, *Clerk.*

Filed Nov. 27, 1863.

IN THE SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1864.

No. 149.

THE UNITED STATES OF AMERICA, Appellant, *vs.* THE STEAMBOAT MOHAWK, and her engine, boats, apparel, tackle, and furniture, Appellee.	Appeal from the circuit court of the United States for the eastern district of Michigan.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

JAMES SPEED,
Attorney General.
J. HUBLEY ASHTON,
Ass't Attorney General.

GOVERNMENT PRINTING OFFICE.

IN THE SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1864.

No. 149.

THE UNITED STATES OF AMERICA, Appellant, *vs.* THE STEAMBOAT MOHAWK, and her engine, boats, apparel, tackle, and furniture, Appellee.	Appeal from the circuit court of the United States for the eastern district of Michigan.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

STATEMENT.

This was a libel of information filed in the district court of the United States for the eastern district of Michigan, against *The Steamboat Mohawk*, her tackle, apparel, and furniture, alleging substantially as follows:

First.

That a certificate of enrollment and a license were fraudulently and knowingly used for the said vessel, from the 18th day of June, 1862, to the 10th day of July, 1862, the said vessel not being, during said time, actually entitled to the benefit of the same; and that, by reason thereof, the said vessel, with her tackle, apparel, and furniture, was forfeited to the United States, by force of the 27th section of the act of December 31, 1792.—(1 Stat., 298.)

Second.

That on the 10th of June, 1862, one George J. Fellers, of Detroit, Michigan, took and subscribed an

oath at the custom-house in Detroit, before D. V. Bell, deputy collector, declaring that he, the said Fellers, was the true and only owner of said steamboat, which said matter of fact was within the knowledge of said Fellers and was not true, because certain other persons, to wit, Warren Chapman and others, were either part or sole owners of said vessel; and that, by reason thereof, the said vessel, her tackle, &c., were forfeited to the United States, by force and virtue of the 4th section of the act of December 31, 1792, (1 Stat., 289,) and 2d section of the act of February 18, 1793.—(1 Stat., 305.)

Third.

That on or about the 31st day of May, 1862, certain affidavits of George J. Fellers, John A. Sloan, and Stewart McDonald were filed with the collector at Detroit, for the purpose of procuring the said vessel to be enrolled under the act of December 23, 1852, (10 Stat., 150,) and that the said affidavits untruly stated that the said vessel had been *wrecked* in the waters of the United States, and had been purchased and repaired by said Fellers by repairs equal to *three-fourths* of her *cost* when so repaired, and also falsely stated her value at $1,200 instead of $6,000, her true and actual value; and that, by reason thereof, the said vessel, her tackle, &c., were forfeited to the United States by force and virtue of the respective sections of the acts of 1792 and 1793 last before mentioned.

Fourth.

That the said vessel was found trading from St. Joseph, Michigan, to Chicago, Illinois, without a license; and, although a foreign vessel, did not pay her several and respective tonnage dues, in violation of section 6 of the act of February 18, 1793.

Fifth.

That the owners and master of said steamboat did transport therein, on ten different occasions, in and upon Lake Michigan, goods and passengers, without having first obtained from the proper officer a license

under existing laws, in violation of the 2d section of the act of July 7, 1838, (5 Stat., 304;) and that, by reason thereof, for each violation of the said act, the owners did forfeit to the United States the sum of five hundred dollars, and in all five thousand dollars, for which penalty the said steamboat is liable under the said section of the said statute.

Sixth.

That the said owners and master transported, as aforesaid, goods and passengers without having complied with the conditions of the last-mentioned act, and those of the act of August 30, 1852, upon the same subject, touching the construction, equipment, and inspection of the hull and boilers of said steamboat; and that thereby the said owners did forfeit the sum of five hundred dollars for each of said violations of law; and that for the said penalties the said vessel is liable to the United States.

The foregoing are the respective allegations upon which either the absolute forfeiture of this vessel, or the enforcement of a liability of the owners and master for pecuniary penalties attaching to her, under the several statutory provisions named, was demanded in the district court by the United States.

The seventh, and last, article of the libel (Record, pp. 4—6) sets forth the facts and circumstances by and under which the said forfeitures and penalties accrued. The facts alleged are briefly these: That John A. Sloan, of Malden, C. W., a foreigner, owned the foreign-built British steamboat Mohawk, and sold her to the claimants for the sum of $6,000, the said Sloan agreeing, *as part of the bargain*, to *metamorphose* the vessel into an American bottom, under the act of December 23, 1852, (10 Stat., 149;) that, accordingly, Sloan had the vessel sunk, by artificial means, during fair weather, in shallow water, and while moored near Clark's dry dock, below Detroit, on April 11, 1862; that, on the next day, Sloan made a pretended sale of the vessel to the said George J. Fellers (a friend of Sloan) for $1,200, in order to enable the reckoning of the contemplated subsequent repairs at three-fourths

of the vessel's cost; that small repairs but large additions were then made to the vessel, under the direction of the *real purchasers*, the claimants, who had taken possession of the boat on the consummation of the bargain with Sloan; and that the said repairs were not equal to three-fourths of the true and actual cost of the vessel after they were completed.

Sloan caused Fellers, on or about the 31st May, 1862, to file affidavits with the collector at Detroit, making a simulated case under the act of 1852, and thereby an order from the Secretary of the Treasury was fraudulently procured, on or about the 5th of June, 1862, authorizing, under the said act, the enrollment of the vessel. The said collector accordingly issued, on the 18th of June, an enrollment and license for the steamboat; and, on the next day, the said Fellers made a pretended sale of the vessel to the claimants, who were really before the owners, for six thousand dollars.

On the 19th of June (the day of the pretended sale to the claimants) the claimants procured, at Detroit, an enrollment and license for the vessel in their names, and immediately thereupon placed her on the route from St. Joseph, Michigan, to Chicago, Illinois, between which places she continued to run till the time of her seizure.

A claim and answer were filed on behalf of Matthias Teetzel, George Parmela, Warren Chapman, and John Martin, of St. Joseph, Michigan.—(Record, p. 8.)

John Martin, however, testified that he did not authorize any defence to be interposed for him.—(Record, p. 33.) He did not sign the answer.—(Record, p. 11.)

The answer denies upon information and belief the several charges contained in the libel, and avers that the claimants were *bona fide* purchasers of the vessel, without notice of the alleged fraud charged by the libellants.

Exceptions (Record, p. 11) were filed by the United States to the said answer, to the following effect:

1. That the answer does not allege that the claimants are the *true* and *bona fide* and *sole* owners of the vessel, as required by Rule 26, prescribed by this

court for the practice of the courts of admiralty.—(Revised Rules of Supreme Court, p. 77.)

2, 3, and 4. That various allegations are not distinctly and fully answered.

5. That article 3 of libel, alleging the artificial "wreck," is not answered at all.

6 and 7. That certain other allegations are unanswered.

8. That only three of the four alleged owners sign the answer.

The prayer of the exceptions was that a new answer be required, or that the matter of the exceptions be taken *pro confesso* against the claimants to the full purport and effect of the unanswered articles, especially articles 3d and 7th of the libel, under Rule 26 before cited.

Depositions were taken on behalf of the libellants, and, after hearing the proofs, (the claimants offering no testimony,) the district court dismissed the libel. This decree was affirmed by the circuit court on appeal, (Rec., p. 43,) whereupon the United States were allowed an appeal to this court from the decree of the circuit court.

ARGUMENT.

FIRST POINT.

This vessel is forfeitable and should have been condemned as forfeited to the United States by the circuit court, under the law and the evidence, because an enrollment to the benefit of which she was not actually entitled was fraudulently and knowingly used for her, in violation of the statutes of the United States.

I.

THERE IS SUFFICIENT STATUTORY AUTHORITY FOR THE FORFEITURE OF THE VESSEL ON THE GROUND INDICATED.

The Mohawk obtained her first enrollment as an American vessel under authority of the act of December 23, 1852, authorizing the Secretary of the Treasury to issue a *register* or *enrollment* for any foreign-built

vessel which may have been wrecked in the United States and *purchased* and *repaired* by a *citizen* thereof, provided the *repairs put upon such vessel* shall be equal to three-fourths of her *cost when so repaired.*—(10 Stat., 149.)

It is important now to consider the relation of this statute to the prior statutes on the subject of the registering and enrolling of vessels of the United States, and the bearing of those earlier acts upon the statute under which the Mohawk obtained her American credentials. We contend, generally, that the act of 1852 should be treated by the court as incorporated with, and as constituting a part of, the entire body of prior statutory provisions on that subject; and that the same construction and the same effect should be given to the act as if its provisions, for the registering and enrolling of the class of vessels indicated, had been embraced in the acts of 1792 and 1793, respectively; as if so much of the statute as provides for the *registering* of certain foreign-built vessels wrecked in the United States had constituted a section of the act of 1792, and so much of it as relates to the *enrollment* of such vessels had been embraced in a separate section of the act of 1793. The rule under which this court has uniformly proceeded in construing revenue statutes, should be the guiding rule of interpretation, we contend, with respect to these navigation laws.—(Stuart *vs.* Maxwell, 16 How., 162; Ring. *vs.* Maxwell, 17 *Ibid.* 147.)

The act of 1789 (1 Stat., 55) was the first registry and enrollment statute. The two subjects are now mainly governed, respectively, by the acts of December 31, 1792, (1 Stat., 287.) and February 18, 1793, (1 Stat., 305.) The act of 1792 applies to vessels registered to be engaged in foreign commerce. The act of 1793 relates to vessels enrolled and licensed for engaging in the coasting trade and fisheries. By the act of 1792 (section 2) "vessels of the United States," vessels entitled to registers, are divided into four classes: (1.) Those built in the United States before or after July 4, 1776, and belonging wholly to citizens thereof. (2.) Those not built in the United States,

but on May 16, 1789, belonging and thenceforth continuing to belong to citizens thereof. (3.) Vessels captured in war by citizens of the United States and condemned as prize. (4.) Vessels forfeited for a breach of the laws of the United States and wholly owned by citizens thereof. Under the provisions of the act of 1793, (section 2,) vessels of one or other of these classes are entitled also to obtain enrollments and licenses.

Now, the effect of the act of 1852 is simply to add a *fifth* class to the list just mentioned, and to enable certain *foreign-built*, but *American purchased and repaired* vessels to be denominated and to be deemed vessels of the United States, and to be entitled to the benefits and privileges of such vessels engaged either in foreign or domestic commerce. When the vessels provided for obtain their American credentials, whether registers or enrollments, by the order of the Secretary of the Treasury, they come under the operation of the entire code of laws and regulations which has been established by Congress for the government of all vessels entitled either to registers or enrollments under the acts of 1792 and 1793, and the statutes amendatory thereof. Whatever penalties attach to vessels registered conformably to the act of 1792, or enrolled conformably to the act of 1793, attach to registered or enrolled vessels under the act of 1852; whatever conduct on the part of vessels of either class will forfeit, by operation of the statutes, vessels registered under the act of 1792, or vessels enrolled under the act of 1793, the same conduct, on the part of vessels that have obtained registers or enrollments under the act of 1852, will forfeit such vessels. This is our view of the general relation of the statute of 1852 to the prior legislation of Congress *in pari materia*.

The next question is, whether the fraudulent use of an *enrollment*, to the benefit of which a vessel is not entitle l, will work a forfeiture of such enrolled vessel by operation of the act of 1793. There is no express provision in the act of 1793 which subjects an enrolled vessel to forfeiture for such an act—carrying fraudu-

lently an enrollment to the benefit of which she is not entitled. There was such a provision in the old act of 1789.—(1 Stat.. 65.) But the *second* section of the enrolling act (1793) adopts, as we contend, the provision for forfeiture contained in the 27th section of the act of 1792, and that provision is capable of embracing within its terms an enrollment or a license issued pursuant to the act of 1793.

The 27th section of the act of 1792 provides: "*If any certificate of registry* OR RECORD *shall be fraudulently or knowingly used for any ship or vessel not then actually entitled to the benefit thereof according to the true intent of this act, such ship or vessel shall be forfeited to the United States.*"—(1 Stat., 298.)

Now, the act of 1793 (section 2) provides: "*In order for the enrollment of any vessel, she shall possess the same qualifications, and the same requisites in all respects shall be complied with, as are made necessary for registering ships by the registry law; and the same duties are imposed on all officers, with the same authority, in relation to enrollments, and the same proceedings shall be had touching enrollments.*"

We say, then, that a vessel is not entitled to the benefit of an enrollment issued under the act of 1793 unless she is entitled to the benefit of it according to the true intent of the act of 1792, (see U. S. *vs.* Bartlett, Daviess' R., p. 13,) and that if a vessel obtain an enrollment to the benefit of which she is not entitled according to the true intent of the act of 1792, and fraudently use the same, she is forfeited under the provision of the 27th section of the act of 1792, that "if any certificate of registry OR RECORD shall be fraudulently used for any ship or vessel not actually entitled to the benefit thereof, such ship or vessel shall be forfeited."

An enrollment in the form prescribed by the act of 1793 is a "*record*," or "*certificate of record*," within the meaning of the act of 1792.

Of course where the *same* penalties are applied to registered and enrolled vessels expressly under *different* circumstances, as was illustrated in the case of *The Steamboat Forrester*, (1 Newberry's Adm., R. 90,)

or where *different* penalties are provided for the *same* act in the cases of registered and enrolled vessels, respectively, as was illustrated in *The Two Friends*, (1 Gall, 120,) the provisions of the statute of 1793 must prevail in the cases of enrolled vessels. But in the case at bar, the only penalty for the offence which has been described, is that prescribed in the 27th section of the act of 1792, and the language of that section comprehends *all* vessels using certificates of registry or records.

If, therefore, the act of 1852 has the relation that we contend it has to the act of 1793, and is to be construed as if it were a part of the act of 1793, and if the words of the 27th section of the act of 1792 embrace vessels carrying enrollments issued under the act of 1793, as we contend they do, then the conclusion is plain and irresistible, that a vessel for which an enrollment obtained under the authority of the act of 1852 is fraudulently used, is forfeited to the United States.

But it is not necessary to resort to any subtle argumentation, any process of forcibly welding the act of 1793 to the act of 1792, to affect enrolled vessels guilty of the act described with the consequence which attaches to the fraudulent use of a register by a registered vessel; for the *Statute of 2d March* 1831, *section* 3, provides, that any vessel of the United States navigating the waters on our northern, northeastern, and northwestern frontiers, otherwise than by sea, shall be enrolled and licensed in such form as may be prescribed by the Secretary of the Treasury, "which enrollment and license shall authorize any such vessel to be employed either in the coasting or foreign trade; and no certificate of registry shall be required for any vessel so employed on said frontiers: *Provided, That such vessel shall be in every other respect liable to the rules, regulations, and penalties now in force relating to registered vessels on our northern, northeastern, and northwestern frontiers.*"—(4 Stat., 487.)

The effect of this statute is to destroy the distinction theretofore existing between registered and enrolled vessels, so far as the vessels navigating the waters

flagrant fraud that "he who runs may read." Every one of the substantial allegations in the seventh article of the libel (condensed in the foregoing statement) is as completely established by the proofs, as fraud in a case of this character was ever proved; and it is one of the remarkable features of the present cause that the claimants, though much more than a *prima facie* case was made out by the United States, and though it was completely in their power to destroy the entire theory of the libel if the transaction had been an honest one, did not venture to open their mouths in reply to the evidence of the libellants.

A brief analysis of the testimony will here be sufficient:

George Parmela, (claimant,) Henry C. Morton, Charles Hull, John Martin, Nathaniel Robbins, and Luke Hickey, proposed to become joint purchasers of some steamboat to run between St. Joseph, Michigan, where the parties lived, and Chicago, Illinois.—(Rec., p. 14.) They heard of the Mohawk, a British vessel, owned by John A. Sloan, and sent Luke Hickey and George Parmela to Detroit to look at her, where she was then lying at a dry dock below Detroit.—(Rec., pp. 14, 23.) They saw the vessel and Sloan, (Rec., p. 15,) who asked for the boat $6,000, three thousand down, and the balance in one or two years. The parties (Hickey and Parmela) mentioned to Sloan the trade in which they and their friends designed using her, and Sloan then proposed "changing her nationality, or getting it done. Sloan made very light of the operation; he said he would attend to that."—(Rec., p. 19.) He undertook, as part of the bargain, to deliver the vessel to the proposed purchasers as an American vessel with American papers.—(Rec., p. 37.) The expenses of change of nationality were to be incurred by Sloan, and the repairs, necessarily incurred to get her nationality changed, if any.—(Rec., p. 37.) This interview seems to have occurred about April 5, 1862. Hickey and Parmela returned then to Detroit and reported to their associates.—(Rec., pp. 22, 30.) Before Hickey returned to St. Joseph the boat had been sunk at the dry dock.—(Rec., p. 17.) The

pretense was that she had sunk accidentally, but Hickey proves (Rec., p. 39) that she was sunk artificially, and for the purpose of making a simulated case under the act of 1852.

About ten days after the first interview with Sloan, Hickey returned to Detroit and took possession of the vessel, had her raised, and took her to McDonald's ship-yard for repairs.—(Rec., pp. 16, 17.) While she was being repaired, Hickey received from the parties engaged in the enterprise $1,200, part of the money to apply on the first payment, part of it for his expenses, and part to be applied to repairs. Parmela, Robbins, Hull, Martin, and Chapman, (claimant,) signed the note on which this money was raised.—(Rec., p. 17, 22.) It happened that not much of this money was used. The balance Hickey paid over to Matthias Teetzel, (claimant,) on a final settlement.—(Rec., p. 18.) When Hickey returned to Detroit as before stated, he took down the joint note of the parties named for four-fifths of $5,500, and John Martin's individual note for a separate one-fifth of that amount. Five hundred dollars in cash seem to have been paid to Sloan.—(Rec., pp. 25, 19.) These notes were payable to Sloan, (p. 25.) Sloan seems in the meantime to have made a bill of sale of the vessel to George J. Fellers on a pretended purchase of the vessel by him for $1,200; so that the parties were referred by Sloan to Fellers and a lawyer at Detroit, who were then engaged in obtaining the order for the enrollment from the Secretary of the Treasury.—(Rec., p. 25.) After the authority for the enrollment of the vessel came from Washington, and an enrollment had been taken out by Fellers, the notes which had been given by the parties to Hickey were destroyed, and new separate notes for the same amounts, with collateral security, were given, Teetzel (claimant) taking the interest of Robbins in the purchase.—(Rec., pp. 26, 27, 28.) These notes were made payable to Fellers, (Rec., p. 31,) and constituted the consideration of the bill of sale executed by Fellers to the claimants on the 19th of June, 1862, one day after the enrollment issued to Fellers.—(Rec., p. 9, answer.)

Now, we allege that it is both morally and legally certain from the whole evidence, that the notes and securities were received by Fellers for the benefit of Sloan, the real owner of the vessel up to the time of the conveyance by Fellers to the claimants. The *bona fides* of the alleged sale by Sloan to Fellers were not attempted to be proved by the claimants. It was understood by all the parties that they were really buying from Sloan, and that he had made a pretended sale to Fellers for the purpose of getting the vessel Americanized.—(Rec., pp. 31, 33.)

Even if no more than a *prima facie* case is made out against the claimants, the vessel must be condemned in the absence of countervailing proof on the part of the owners, which it was their duty to produce if it existed. The most credulous mind could not believe that Sloan would sell to Fellers for $1,200 a vessel worth $6,000, and for which he had been already offered, by *these very parties*, that amount; an offer, too, which he had accepted, and under which the parties had gone into possession of the vessel.

Hickey proves the amount of repairs and *additions*, of every name, nature, and description, placed on the vessel, was not more than $3,000.—(Rec., pp. 18, 39.) The cost of the vessel to the owners was, therefore, about $9,000.—(Rec., p. 18.) Thus the vessel was not entitled to be enrolled under the provisions of the act of 1852.

The vessel was enrolled in Fellers' name on 18th of June, 1862. On the 19th of June the St. Joseph owners, the claimants, obtained the second enrollment and license at Detroit. The vessel was not entitled to the benefit of either enrollment and license, the second any more than the first; and if the court believe that either the first or second enrollment and license were fraudulently used for her by these parties, the vessel should be forfeited. That they not only had knowledge of, but that they were parties to, the original fraud, there can be no reasonable doubt under the evidence.

One single fact *demonstrates* that the transfer of the vessel by Sloan to Fellers was not *bona fide*, viz: that

at the very time it was made Sloan knew that he could get $6,000 for the vessel, the claimants being then under obligation, by their agreement, never rescinded, to pay that amount for her. Not only that, but after the sinking, when the parties knew the full extent of the injury, they made and delivered their notes for the full amount of the agreed price, *payable to Sloan. They never retracted their offer to pay* $6,000; and yet, while these parties were under an agreement, partly executed, to buy, and Sloan was under an engagement to sell, the vessel for that price, it is pretended that he, in the face of all this, gave the property away to *Fellers* for $1,200!!

The presumption is that a man who, under such circumstances, sells for $1,200 property for which he knows he can get $6,000 is either a fool or a knave. There is no evidence that Sloan was a fool.

SECOND POINT.

The vessel likewise should be declared forfeited on the second and third articles of the libel, on the ground that the matters of fact stated in said articles, and alleged in the oath taken by Fellers, in order to the enrollment of the vessel, were not true.

The answer admits (article 5. Rec., p. 9) that Fellers, before obtaining the enrollment issued for the vessel by the collector of the port of Detroit, took the oath and filed the bond required by law. In that oath were alleged, of course, all the matters of fact charged by the libel to have been untrue. He was required by the law to swear, and did swear, that he was the sole owner of the vessel; that she had been wrecked in the United States, and by him had been purchased and repaired; and that the repairs were equal to three-fourths of her cost to him after she was so repaired. If we are right in our view of the law and the evidence in the case contended for under the first point, there can be no doubt—1st. That in thus swearing, Fellers stated knowingly in this oath what was not true; and, 2d. That the vessel thereby was forfeited by operation of the 4th section of the act of

Now, we allege that it is both morally and legally certain from the whole evidence, that the notes and securities were received by Fellers for the benefit of Sloan, the real owner of the vessel up to the time of the conveyance by Fellers to the claimants. The *bona fides* of the alleged sale by Sloan to Fellers were not attempted to be proved by the claimants. It was understood by all the parties that they were really buying from Sloan, and that he had made a pretended sale to Fellers for the purpose of getting the vessel Americanized.—(Rec., pp. 31, 33.)

Even if no more than a *prima facie* case is made out against the claimants, the vessel must be condemned in the absence of countervailing proof on the part of the owners, which it was their duty to produce if it existed. The most credulous mind could not believe that Sloan would sell to Fellers for $1,200 a vessel worth $6,000, and for which he had been already offered, by *these very parties*, that amount; an offer, too, which he had accepted, and under which the parties had gone into possession of the vessel.

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The vessel was enrolled in Fellers' name on 18th of June, 1862. On the 19th of June the St. Joseph owners, the claimants, obtained the second enrollment and license at Detroit. The vessel was not entitled to the benefit of either enrollment and license, the second any more than the first; and if the court believe that either the first or second enrollment and license were fraudulently used for her by these parties, the vessel should be forfeited. That they not only had knowledge of, but that they were parties to, the original fraud, there can be no reasonable doubt under the evidence.

One single fact *demonstrates* that the transfer of the vessel by Sloan to Fellers was not *bona fide*, viz: that

at the very time it was made Sloan knew that he could get $6,000 for the vessel, the claimants being then under obligation, by their agreement, never rescinded, to pay that amount for her. Not only that, but after the sinking, when the parties knew the full extent of the injury, they made and delivered their notes for the full amount of the agreed price, *payable to Sloan. They never retracted their offer to pay* $6,000; and yet, while these parties were under an agreement, partly executed, to buy, and Sloan was under an engagement to sell, the vessel for that price, it is pretended that he, in the face of all this, gave the property away to *Fellers* for $1,200!!

The presumption is that a man who, under such circumstances, sells for $1,200 property for which he knows he can get $6,000 is either a fool or a knave. There is no evidence that Sloan was a fool.

SECOND POINT.

The vessel likewise should be declared forfeited on the second and third articles of the libel, on the ground that the matters of fact stated in said articles, and alleged in the oath taken by Fellers, in order to the enrollment of the vessel, were not true.

The answer admits (article 5. Rec., p. 9) that Fellers, before obtaining the enrollment issued for the vessel by the collector of the port of Detroit, took the oath and filed the bond required by law. In that oath were alleged, of course, all the matters of fact charged by the libel to have been untrue. He was required by the law to swear, and did swear, that he was the sole owner of the vessel; that she had been wrecked in the United States, and by him had been purchased and repaired; and that the repairs were equal to three-fourths of her cost to him after she was so repaired. If we are right in our view of the law and the evidence in the case contended for under the first point, there can be no doubt—1st. That in thus swearing, Fellers stated knowingly in this oath what was not true; and, 2d. That the vessel thereby was forfeited by operation of the 4th section of the act of

1792, the forfeiture attaching under that act to a registered vessel by the taking of a false oath on the application for registry, affecting, by the provisions of the act of 1831, all vessels enrolled for the navigation of the waters on our northern and other frontiers.

Judge Story was *inclined* to the opinion that false swearing in any oath required for the enrollment of a vessel by the act of 1793 was not punishable by forfeiture of the property, but criminally as willful perjury; that the remedy of the United States in such case was against the *person*, and not against the *thing*.—(The Two Friends, 1 Gall., 120.) But since the act of 1831—the case in Gallison was decided in 1812—the penalty of the act of 1792, and not that of the act of 1793, is, in our view, to be visited upon false swearing on the enrolling of a vessel under the statute of 1831.

THIRD POINT.

There should be a decree against this vessel for the amount of the pecuniary penalty incurred by the owners for the transportation of goods and passengers thereon, during the time mentioned in the fifth and sixth articles of the libel, without a license obtained under the laws of the United States.

It was in proof (Record, p. 40) that the Mohawk left Detroit on the 19th of June, 1862, and arrived at Chicago on the 24th of June. She began her trips between Chicago and St. Joseph on the next day, and continued them till the 10th of July, 1862. On each trip she carried passengers and general merchandise. The demand made by the United States against the vessel on this account proceeds upon the ground that her second license, obtained June 19, 1862, at Detroit, was obtained by fraud, and was, in contemplation of law, *void*. That this ground is sustainable both upon reason and authority, appears abundantly in the careful exposition of the doctrine involved in the proposition contained in Mr. Justice Story's opinion in the case of Bottomley *vs.* U. S., (1 Story, 147,) deciding that a permit to unlade and deliver goods obtained by

fraud was utterly void and a mere nullity, and never had any legal existence as a permit. A case directly in point is Anthony *vs.* Wilson, (14 Pick., R. 303,) in which the supreme court of Massachusetts (by Putnam, J.) determined that a party may support an issue of *no license*, in an action of trespass, by proof that the license set up in the case was founded in fraud. This judgment received the entire concurrence of Mr. Justice Story in Bottomley *vs.* The U. S., (1 Story, 151,) who there said: "The moment that it is ascertained that any act, deed, or instrument is founded in fraud, that act, deed, or instrument must be treated as a nullity, and as if it had no legal existence in relation to the injured party." In the District Court of Maine Judge Ware held, in a very carefully prepared opinion, that an enrollment made by the proper officer without any imputation of fraud or deceit on the part of the owners, *but without a compliance with the requisites prescribed by the statute*, did not clothe the vessel with the rights and privileges of a vessel of the United States.—(U. S. *vs.* Bartlett, Daviess' R., p. 14.) This is a much stronger case in principle than the case just cited.

All the transactions, beginning with the original application of Fellers, through the agency of the claimants, to the Secretary of the Treasury for the first American enrollment, and ending with the granting of the second license, now sought to be avoided by the United States, to the claimants by the Detroit collector, are, in effect, as we contend, but one transaction, "tainted and putrescent throughout."

Through the fraud practised on the Secretary, the claimants were enabled to obtain the license under which the vessel began her voyages between Chicago and St. Joseph. The original fraud is, therefore, an entirely legitimate subject of inquiry in this proceeding. The Secretary was but the agent of the United States, acting under a limited authority prescribed by law; and his order for the enrollment of the vessel having been obtained by fraud, with the knowledge of the claimants, practised upon the Secretary, his

act cannot have any legal validity to bind or affect the United States.

There should, therefore, be a decree, even if the grounds of forfeiture are not sustainable in law, against the vessel for the full amount of the penalty ($5,000) incurred by the owners for their numerous violations of the second section of the act of 7th July, 1838.—(5 Stat., 304.)

FOURTH POINT.

The joint resolution of March 25, 1864, "*authorizing the issue of a register to the steamer Mohawk,*" *does not affect these proceedings for forfeiture.*

The proviso expressly declares that nothing in the act contained shall in any wise affect any legal proceedings now pending in regard to the steamer "Mohawk."

Whatever might be the legal effect of the purview of the joint resolution if it stood alone—whether or not the enactment restores the vessel and pardons the offences committed by the parties as charged—the proviso being directly repugnant to the former construction of the purview, the proviso must stand, if that construction is adopted, as a repeal of the purview.

That is the doctrine of the law, as was held by all the Barons of the Exchequer in the case of the Attorney General *vs.* The Chelsea Water Works.—(Fitzg. 195; Bacon Ab., tit. Statute)

The decree of the circuit court should therefore be reversed.

JAMES SPEED,
Attorney General.
J. HUBLEY ASHTON,
Ass't Attorney General.

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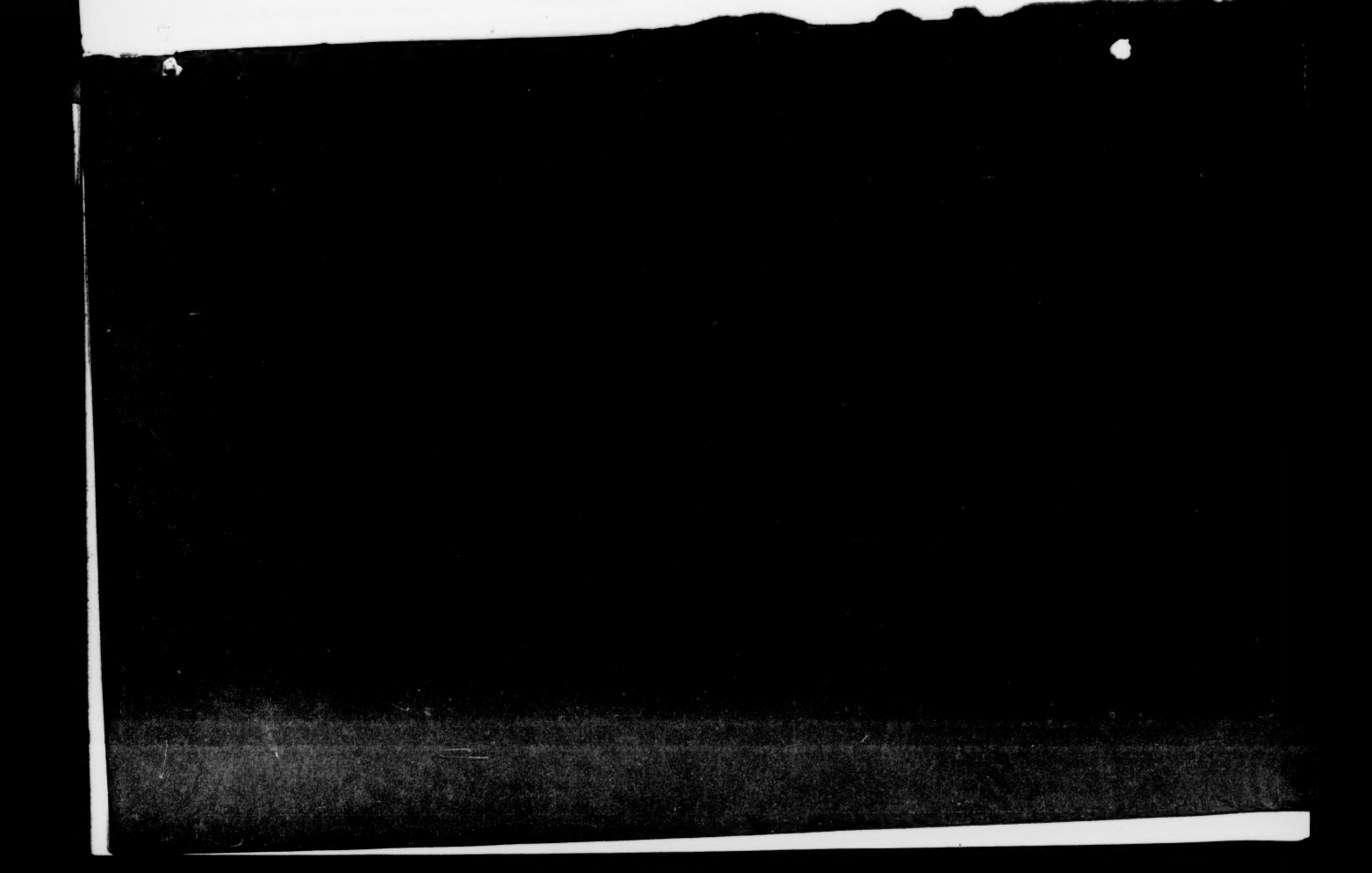

No. ~~149~~ 78

THE SUPREME COURT

OF THE

UNITED STATES.

THE UNITED STATES, APPELLANTS,

VS.

STEAMER MOHAWK.

BRIEF OF RESPONDENT.

~~J. S. NEWBERRY.~~
W. A. Moore

DETROIT:
O. S. GULLEY'S STEAM PRESSES.
1865.

No. [illegible]

T[illegible]E [illegible]R[illegible]VE C[illegible]

IN THE

IN THE

Supreme Court of the United States.

THE UNITED STATES,

vs.

STEAMER "MOHAWK."

The libel was filed, in this case, to procure a forfeiture of the steamer "Mohawk," under section 27, of the Act of 31st Dec., 1792, which states, "If any Certificate of Registry, or record, shall be fraudulently or knowingly used for any ship or vessel not then actually entitled to the benefit thereof, according to the true intent *in this Act*, such ship or vessel shall be forfeited to the United States, with her tackle, apparel and furniture."

Brightly's Digest, p. 831, Sec. 27.

The libel sets up that the said steamer "Mohawk" was a foreign vessel; that she was fraudulently enrolled at the port of Detroit, in June, 1862, under the Act of Dec. 23, 1852, by one George J. Fellers, who transferred said steamer, immediately after enrollment, to claimants and respondents.

Brightly's Digest, p. 833, Sec. 42.

That said claimants were cognizant of the fraudulent procurement of said enrollment, and used the same; that said enrollment was void; and that said steamer was liable to forfeiture for said use, under the Acts above cited.

That said steamer was employed by claimants, under said fraudulent enrollment, in transporting goods, wares, merchandise and passengers, between one American port and another, to wit: from port of St. Joseph, in the State of Michigan, to the port of Chicago, in the State of Illinois.

That, as said enrollment was fraudulently procured, it was void, and therefore a penalty is claimed for such employment without enrollment.

The answer sets up that the claimants are the sole owners; that they purchased of Fellers subsequent to enrollment; were purchasers in good faith, and for a valuable consideration. Denies, upon information and belief, any fraud in the procurement. Alleges that claimants are subsequent bona fide purchasers, without notice of the fraud, if any had been used. Denies that said enrollment is void, and denies that said steamer is liable to forfeiture, under said Acts.

Claimants annex to their said answer an exception to the allegations contained in the libel, and allege that the same does not make such a case as would render said steamer liable to forfeiture.

The District Court held that the penalties of the Act of 1792 did not apply to vessels enrolled and licensed under the Act of 1852. That the exception to the libel in this behalf was well taken, and the libel was dismissed.

The decree of the District Court was on appeal affirmed by the Circuit Court.

By Act of Congress, of Dec. 31st, 1792, section 27, it was "*Provided*, That if any Certificate of Registry" should be "fraudulently or knowingly used by any vessel *not entitled thereto, according to the true intent of this Act*, such ship or vessel" should "be forfeited, &c."

Brightly, p. 830.

In December, 1852, Congress passed a short Act, not amendatory of any other Act, but on a new and independent subject, providing for converting wrecked foreign bottoms into U. S. bottoms, in certain cases.

Brightly, p. 833.

Now it is claimed that the penalty, or forfeiture of the Act of 1792, applies to the Act of 1852.

The argument, on the part of the United States, is this:

That Acts *pari materia* are to be taken together as one Act; that, hence, the Act of 1852 is to be read as if it was a part of the original Act of 1792; and that by this process, the Mohawk will become subject to section 27 of the latter Act.

This seems to me a gross misapplication of a sound maxim.

The rule of *pari materia* is merely *one of construction*. Acts on the same subject are to be read together, that you may get such light as all the parts throw on each part, and thereby more accurately interpret any doubtful provisions.

For *no other purpose* are different Acts to be taken as one law. I think there is not a case which authorizes a court to *import* independent and distinct provisions from one Act into another.

This is obvious; for, under the rule of *pari materia*, laws which have *expired*, or which have been *repealed*, may be considered. Now, it would be absurd to say that the repealed or expired Acts were to be taken as a *part of the law itself!* Yet such would be the logical effect, if we accepted the meaning which the District Attorney gives the rule.

The true sense is that they are to be read with subsisting laws, as *aids* to interpretation. The language of Lord Mansfield is singularly perspicuous: "They shall be taken and *construed together*, as one system, and explanatory of each other."

Rex v. Loxdale; 1 Barr, 447.

This gives the true effect of the rule. Beyond this it cannot legitimately be stretched. There is no warrant for tacking the independent provisions of one Act upon another.

Right here we must not disregard an important distinction. An Act may be *amended*; and this by substitution, addition, diminution, or other qualification. The legal effect is, of course, to substitute the amended form for the original form, and to render it subject to the same relation to all other parts of the Act.

In this case, the amendments become a part of the amended law, in the most literal sense. It becomes such by *incorporation*.

But this is not the sense which the rule *pari materia* contemplates, when it says that different acts are to be taken together, as one law. What that sense is we have fully shown.

The cases referred to by the District Attorney, in Howard's Reports, are entirely consistent with the above principles. Indeed, the above distinctions are fully recognized.

The Court, in those systems, reads the whole revenue code together, in *order to interpret its different parts*; to see how far a subsequent Act has repealed or modified a former Act; to see what provisions of the former Acts, *relating to the same particulars*, are still in force, &c., &c.

Thus, in Stuart v. Maxwell, 16 How., 158, the question was, whether the Tariff Act of 1846 repealed certain provisions of the Tariff Act 1842, and in order to reach a sound interpretation, the Court read both Acts together.

So in Ring v. Maxwell, 17 How., 147, the question was whether a provision of the Tariff Act of 1842 had been repealed by a subsequent Act.

These were both correct applications of the rule. The critical observations of Curtis I, pp. 150 and 151, fully confirm both of our positions as to the rule *pari materia*, and as to the amendatory laws.

Now to apply this rule to the case:

If there is anything doubtful in the Act of 1852, we may

resolve them by the light of other Acts *in pari materia*. Thus we may construe the terms used, &c., &c.

But when we have *thus settled the just meaning* of the Act of '52, there the rule ends. It may enlarge the scope of the Act by the meaning which it infuses into the terms used. So far it may go, but no farther. It cannot supplement the Act by borrowing substantive and additional clauses from other Acts on the same subject.

If this could be done, who could safely pronounce where an Act begun or ended?

The Act of 1852 is not amendatory of, or supplementary to, any other Act. It is complete in itself. It relates to *a particular* not touched in the Act of '92. It does not modify, or in any way affect, any part of that Act.

It is indeed a part of one system; but it is a new feature in the system, and borrows nothing but its phraseology from that system.

In one word, the Act of 1852 for the first time provides for the conversion of foreign into domestic bottoms. The conditions and machinery are *all special*. The head of the Treasury Department passes on each case, and on special proofs. It is a special certificate, and for cases which are distinctive from ordinary registry.

And as to this proceeding, the case is in no manner and in no degree within the scope of the Act of 1792.

It is true that after this the vessel passes into the condition of domestic vessels. If therefore she needs a new registry, it must be done under the Act of 1792. She must acquire and use such new registry in the forms and under the liabilities of that Act: and then, if she uses such certificate, not being entitled thereto, *according to the true intent of that Act*, she will be subject to forfeiture.

It thus seems clear to us that the penalty of the Act of '92 can have no application to the Mohawk.

We may add that, though not directly in point, yet our conclusion seems logically borne out by clear reasoning of the Court in the case of the steamer Forrester.

1 Newb. Adm. R. 81.

The Secretary of the Treasury, in determining the question of granting the enrollment, acts in a judicial capacity, and such an act cannot be nullified in the manner sought.

In the enrollment of American vessels, if the application and affidavits, in terms, come within the requirements of the law, the Collector has no discretion about granting the enrollment; it is his duty to grant it; while in the enrollment under the Act of 1852, the Collector receives the application, transmits it with the proofs of the required allegations, together with his opinion, to the Secretary of the Treasury, and the Secretary acts *judicially* upon the application, and when once *granted* it cannot be nullified. It seems to me the Collector cannot disregard it, nor would it be void however much fraud there might be perpetrated in the procuring of it. If any fraud has been perpetrated, the law furnishes a remedy.

As to the rule *in pari materia*, we beg to refer to

Wakefield v. Phelps, 37 N. H. 295.
State v. Garthwaite, 3 Taber, 143.
4 McLean, 23, 113.
U. S. v. Freeman, 3 How 564
U. S. v. Babbitt, 1 Black, 55.

As to the interpretation of the words of a statute,

Waller v. Harris, 20 Wend. 555
Jones v. Harrison, 6 Excheq. 332, per Parke.

How an amended statute is to be construed,

McKibben v. Lester, 9 Ohio St., 627.

W. A. Moore
for Claimant